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Mandate *for* Leadership

The Conservative Promise

25

Foreword by Kevin Roberts, PhD
Edited by Paul Dans and Steven Groves

Mandate *for* Leadership

The Conservative Promise

Project 2025

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Acknowledgments

This work, *Mandate for Leadership 2025: The Conservative Promise,* is a collective effort of hundreds of volunteers who have banded together in the spirit of advancing positive change for America. Our work is by no means the comprehensive compendium of conservative policies, nor is our group the exclusive cadre of conservative thinkers. The ideas expressed in this volume are not necessarily shared by all. What unites us is the drive to make our country better.

First and foremost, we thank the chapter authors and contributors who gave so freely of their time in service of their country.

We were particularly grateful to have the help of dedicated members of The Heritage Foundation's management and policy teams. Executive Vice President Derrick Morgan, Chief of Staff Wesley Coopersmith, Associate Director of Project 2025 Spencer Chretien, and Thomas A. Roe Institute for Economic Policy Studies Director Paul Ray devoted a significant amount of their valuable time to reviewing and editing the lengthy manuscript and provided expert advice and insight.

The job of transforming the work of dozens of authors and hundreds of contributors into a cohesive manuscript fell upon Heritage's formidable team of editors led by Director of Research Editors Therese Pennefather, Senior Editor William T. Poole, Marla Hess, Jessica Lowther, Karina Rollins, and Kathleen Scaturro, without whose tireless efforts you would not be reading these words. The talented work of Data Graphics Services Manager John Fleming, Manager of Web Development and Print Projects Jay Simon, Director of Marketing Elizabeth Fender, Senior Graphic Designer Grace Desandro, and Senior Designer Melissa Bluey came together to bring the volume to life. We also thank the dedicated junior staff who provided immeasurable assistance, especially Jordan Embree, Sarah Calvis, and Jonathan Moy.

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Thank you.

Paul Dans & Steven Groves

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The 2025 Presidential Transition Project

A NOTE ON "PROJECT 2025"

We want you! The 2025 Presidential Transition Project is the conservative movement's unified effort to be ready for the next conservative Administration to govern at 12:00 noon, January 20, 2025. Welcome to the mission. By opening this book, you are now a part of it. Indeed, one set of eyes reading these passages will be those of the 47th President of the United States, and we hope every other reader will join in making the incoming Administration a success.

History teaches that a President's power to implement an agenda is at its apex during the Administration's opening days. To execute requires a well-conceived, coordinated, unified plan and a trained and committed cadre of personnel to implement it. In recent election cycles, presidential candidates normally began transition planning in the late spring of election year or even after the party's nomination was secured. That is too late. The federal government's complexity and growth advance at a seemingly logarithmic rate every four years. For conservatives to have a fighting chance to take on the Administrative State and reform our federal government, the work must start now. The entirety of this effort is to support the next conservative President, whoever he or she may be.

In the winter of 1980, the fledging Heritage Foundation handed to President-elect Ronald Reagan the inaugural *Mandate for Leadership*. This collective work by conservative thought leaders and former government hands—most of whom were not part of Heritage—set out policy prescriptions, agency by agency for the incoming President. The book literally put the conservative movement and Reagan on the same page, and the revolution that followed might never have been, save for this band of committed and volunteer activists. With this volume, we have gone back to the future—and then some.

It's not 1980. In 2023, the game has changed. The long march of cultural Marxism through our institutions has come to pass. The federal government is a behemoth, weaponized against American citizens and conservative values, with freedom and liberty under siege as never before. The task at hand to reverse this tide and restore our Republic to its original moorings is too great for any one conservative policy shop to spearhead. It requires the collective action of our movement. With the quickening approach of January 2025, we have two years and one chance to get it right.

Project 2025 is more than 50 (and growing) of the nation's leading conservative organizations joining forces to prepare and seize the day. The axiom goes "personnel is policy," and we need a new generation of Americans to answer the call and come to serve. This book is functionally an invitation for you the reader—Mr. Smith, Mrs. Smith, and Ms. Smith—to come to Washington or support those who can. Our goal is to assemble an army of aligned, vetted, trained, and prepared conservatives to go to work on Day One to deconstruct the Administrative State.

The project is built on four pillars.

- **Pillar I**—this volume—puts in one place a consensus view of how major federal agencies must be governed and where disagreement exists brackets out these differences for the next President to choose a path.

- **Pillar II** is a personnel database that allows candidates to build their own professional profiles and our coalition members to review and voice their recommendations. These recommendations will then be collated and shared with the President-elect's team, greatly streamlining the appointment process.

- **Pillar III** is the Presidential Administration Academy, an online educational system taught by experts from our coalition. For the newcomer, this will explain how the government functions and how to function in government. For the experienced, we will host in-person seminars with advanced training and set the bar for what is expected of senior leadership.

- **In Pillar IV**—the Playbook—we are forming agency teams and drafting transition plans to move out upon the President's utterance of "so help me God."

As Americans living at the approach of our nation's 250th birthday, we have been given much. As conservatives, we are as much required to steward this precious heritage for the next generation. On behalf of our coalition partners, we thank you and invite you to come join with us at project2025.org.

Paul Dans
Director, Project 2025

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The contributors listed below generously volunteered their time and effort to assist the authors in the development and writing of this volume's 30 chapters. The policy views and reform proposals herein are not an all-inclusive catalogue of conservative ideas for the next President, nor is there unanimity among the contributors or the organizations with which they are affiliated with regard to the recommendations.

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John G. Malcolm, The Heritage Foundation
Joseph Masterman, Cooper & Kirk, PLLC
Earl Matthews, The Vandenberg Coalition
Dan Mauler, Heritage Action for America
Drew McCall, American Cornerstone Institute
Trent McCotter, Boyden Gray & Associates
Micah Meadowcroft, The American Conservative
Edwin Meese III, The Heritage Foundation
Jessica Melugin, Competitive Enterprise Institute
Frank Mermoud, Orpheus International
Mark Miller, Office of Governor Kristi Noem
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Kevin E. Moley
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Iain Murray, Competitive Enterprise Institute
Ryan Nabil, National Taxpayers Union
Michael Nasi, Jackson Walker LLP
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Mark Robeck, Energy Evolution Consulting LLC
James Rockas, ACLJ Action
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Reed Rubinstein, America First Legal Foundation
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Foreword

A PROMISE TO AMERICA

Kevin D. Roberts, PhD

Forty-four years ago, the United States and the conservative movement were in dire straits. Both had been betrayed by the Washington establishment and were uncertain whom to trust. Both were internally splintered and strategically adrift. Worse still, at that moment of acute vulnerability and division, we found ourselves besieged by existential adversaries, foreign and domestic. The late 1970s were by any measure a historic low point for America and the political coalition dedicated to preserving its unique legacy of human flourishing and freedom.

Today, America and the conservative movement are enduring an era of division and danger akin to the late 1970s. Now, as then, our political class has been discredited by wholesale dishonesty and corruption. Look at America under the ruling and cultural elite today: Inflation is ravaging family budgets, drug overdose deaths continue to escalate, and children suffer the toxic normalization of transgenderism with drag queens and pornography invading their school libraries. Overseas, a totalitarian Communist dictatorship in Beijing is engaged in a strategic, cultural, and economic Cold War against America's interests, values, and people—all while globalist elites in Washington awaken only slowly to that growing threat. Moreover, low-income communities are drowning in addiction and government dependence. Contemporary elites have even repurposed the worst ingredients of 1970s "radical chic" to build the totalitarian cult known today as "The Great Awokening." And now, as then, the Republican Party seems to have little understanding about what to do. Most alarming of all, the very moral foundations of our society are in peril.

Yet students of history will note that, notwithstanding all those challenges, the late 1970s proved to be the moment when the political Right unified itself

and the country and led the United States to historic political, economic, and global victories.

The Heritage Foundation is proud to have played a small but pivotal role in that story. It was in early 1979—amid stagflation, gas lines, and the Red Army's invasion of Afghanistan, the nadir of Jimmy Carter's days of malaise—that Heritage launched the Mandate for Leadership project. We brought together hundreds of conservative scholars and academics across the conservative movement. Together, this team created a 20-volume, 3,000-page governing handbook containing more than 2,000 conservative policies to reform the federal government and rescue the American people from Washington dysfunction. It was a promise from the conservative movement to the country—confident, specific, and clear.

Mandate for Leadership was published in January 1981—the same month Ronald Reagan was sworn into his presidency. By the end of that year, more than 60 percent of its recommendations had become policy—and Reagan was on his way to ending stagflation, reviving American confidence and prosperity, and winning the Cold War.

The bad news today is that our political establishment and cultural elite have once again driven America toward decline. The good news is that we know the way out even though the challenges today are not what they were in the 1970s. Conservatives should be confident that we can rescue our kids, reclaim our culture, revive our economy, and defeat the anti-American Left—at home and abroad. We did it before and will do it again.

As Ronald Reagan put it:

> Freedom is a fragile thing and it's never more than one generation away from extinction. It is not ours by way of inheritance; it must be fought for and defended constantly by each generation[.][1]

This is the duty history has put before us and the standard by which our generation of conservatives will be judged. And we should not want it any other way.

The legacy of *Mandate for Leadership*, and indeed of the entire Reagan Revolution, is that if conservatives want to save the country, we need a bold and courageous plan. This book is the first step in that plan.

THE CONSERVATIVE PROMISE

This volume—*The Conservative Promise*—is the opening salvo of the 2025 Presidential Transition Project, launched by The Heritage Foundation and our many partners in April 2022. Its 30 chapters lay out hundreds of clear and concrete policy recommendations for White House offices, Cabinet departments, Congress, and agencies, commissions, and boards.

Just as important as the scope of *The Conservative Promise's* recommendations is the breadth of its authorship. This book is the product of more than 400 scholars

and policy experts from across the conservative movement and around the country. Contributors include former elected officials, world-renowned economists, and veterans from four presidential Administrations. This is an agenda prepared *by* and *for* conservatives who will be ready on Day One of the next Administration to save our country from the brink of disaster.

The Heritage Foundation is once again facilitating this work. But as our dozens of partners and hundreds of authors will attest, this book is the work of the entire conservative movement. As such, the authors express consensus recommendations already forged, especially along four broad fronts that will decide America's future:

1. Restore the family as the centerpiece of American life and protect our children.

2. Dismantle the administrative state and return self-governance to the American people.

3. Defend our nation's sovereignty, borders, and bounty against global threats.

4. Secure our God-given individual rights to live freely—what our Constitution calls "the Blessings of Liberty."

What makes these four pieces of the conservative promise so valuable to the next President is that they cut through superficial distractions and focus on the moral and foundational challenges America faces in this moment of history. This was one of the secrets of conservatives' success in the Reagan Era, one our generation should emulate.

As in the late 1970s, Americans today experience the failures of political and cultural elites in countless ways: in the job market and in the grocery store checkout lines, on the streets and in our schools, in the media and within our institutions. But in truth, these daily dysfunctions are not innumerable problems, but innumerable manifestations of a few core crises.

In 1979, the threats we faced were the Soviet Union, the socialism of 1970s liberals, and the predatory deviancy of cultural elites. Reagan defeated these beasts by ignoring their tentacles and striking instead at their hearts.

His approach to the Cold War? "We win and they lose."

His economic agenda? The human dignity of work and its many rewards.

His platform in the culture wars? The "community of values embodied in these words: family, work, neighborhood, peace and freedom."

This book—and Project 2025 as a whole—will arm the next conservative President with the same kind of strategic clarity, but for a new age.

PROMISE #1: RESTORE THE FAMILY AS THE CENTERPIECE OF AMERICAN LIFE AND PROTECT OUR CHILDREN.

The next conservative President must get to work pursuing the true priority of politics—*the well-being of the American family*.

In many ways, the *entire* point of centralizing political power is to *subvert* the family. Its purpose is to replace people's *natural* loves and loyalties with *unnatural* ones. You see this in the popular left-wing aphorism, "Government is simply the name we give to the things we choose to do together." But in real life, most of the things people "do together" have nothing to do with government. These are the mediating institutions that serve as the building blocks of any healthy society. Marriage. Family. Work. Church. School. Volunteering. The name *real people* give to the things we do together is *community*, not *government*. Our lives are full of interwoven, overlapping communities, and our individual and collective happiness depends upon them. But the most important community in each of our lives—and the life of the nation—is the family.

Today, the American family is in crisis. Forty percent of all children are born to unmarried mothers, including more than 70 percent of black children. There is no government program that can replace the hole in a child's soul cut out by the absence of a father. Fatherlessness is one of the principal sources of American poverty, crime, mental illness, teen suicide, substance abuse, rejection of the church, and high school dropouts. So many of the problems government programs are designed to solve—but can't—are ultimately problems created by the crisis of marriage and the family. The world has never seen a thriving, healthy, free, and prosperous society where most children grow up without their married parents. If current trends continue, we are heading toward social implosion.

Furthermore, the next conservative President must understand that using government alone to respond to symptoms of the family crisis is a dead end. Federal power must instead be wielded to *reverse* the crisis and rescue America's kids from familial breakdown. *The Conservative Promise* includes dozens of specific policies to accomplish this existential task.

Some are obvious and long-standing goals like eliminating marriage penalties in federal welfare programs and the tax code and installing work requirements for food stamps. But we must go further. It's time for policymakers to elevate family authority, formation, and cohesion as their top priority and even use government power, including through the tax code, to restore the American family.

Today the Left is threatening the tax-exempt status of churches and charities that reject woke progressivism. They will soon turn to Christian schools and clubs with the same totalitarian intent.

The next conservative President must make the institutions of American civil society hard targets for woke culture warriors. This starts with deleting the terms sexual orientation and gender identity ("SOGI"), diversity, equity, and inclusion

("DEI"), gender, gender equality, gender equity, gender awareness, gender-sensitive, abortion, reproductive health, reproductive rights, and any other term used to deprive Americans of their First Amendment rights out of every federal rule, agency regulation, contract, grant, regulation, and piece of legislation that exists.

Pornography, manifested today in the omnipresent propagation of transgender ideology and sexualization of children, for instance, is not a political Gordian knot inextricably binding up disparate claims about free speech, property rights, sexual liberation, and child welfare. It has no claim to First Amendment protection. Its purveyors are child predators and misogynistic exploiters of women. Their product is as addictive as any illicit drug and as psychologically destructive as any crime. Pornography should be outlawed. The people who produce and distribute it should be imprisoned. Educators and public librarians who purvey it should be classed as registered sex offenders. And telecommunications and technology firms that facilitate its spread should be shuttered.

In our schools, the question of parental authority over their children's education is a simple one: Schools serve parents, not the other way around. That is, of course, the best argument for universal school choice—a goal all conservatives and conservative Presidents must pursue. But even before we achieve that long-term goal, parents' rights as their children's primary educators should be non-negotiable in American schools. States, cities and counties, school boards, union bosses, principals, and teachers who disagree should be immediately cut off from federal funds.

The noxious tenets of "critical race theory" and "gender ideology" should be excised from curricula in every public school in the country. These theories poison our children, who are being taught on the one hand to affirm that the color of their skin fundamentally determines their identity and even their moral status while on the other they are taught to deny the very creatureliness that inheres in being human and consists in accepting the givenness of our nature as men or women.

Allowing parents or physicians to "reassign" the sex of a minor is child abuse and must end. For public institutions to use taxpayer dollars to declare the superiority or inferiority of certain races, sexes, and religions is a violation of the Constitution and civil rights law and cannot be tolerated by any government anywhere in the country.

But the pro-family promises expressed in this book, and central to the next conservative President's agenda, must go much further than the traditional, narrow definition of "family issues." Every threat to family stability must be confronted.

This resolve should color each of our policies. Consider our approach to Big Tech. The worst of these companies prey on children, like drug dealers, to get them addicted to their mobile apps. Many Silicon Valley executives famously don't let *their own kids* have smart phones.[2] They nevertheless make billions of dollars addicting other people's children to theirs. TikTok, Instagram, Facebook, Twitter, and other social media platforms are specifically designed to create the digital

dependencies that fuel mental illness and anxiety, to fray children's bonds with their parents and siblings. Federal policy cannot allow this industrial-scale child abuse to continue.

Finally, conservatives should gratefully celebrate the greatest pro-family win in a generation: overturning *Roe v. Wade*, a decision that for five decades made a mockery of our Constitution and facilitated the deaths of tens of millions of unborn children. But the *Dobbs* decision is just the beginning. Conservatives in the states and in Washington, including in the next conservative Administration, should push as hard as possible to protect the unborn in every jurisdiction in America. In particular, the next conservative President should work with Congress to enact the most robust protections for the unborn that Congress will support while deploying existing federal powers to protect innocent life and vigorously complying with statutory bans on the federal funding of abortion. Conservatives should ardently pursue these pro-life and pro-family policies while recognizing the many women who find themselves in immensely difficult and often tragic situations and the heroism of every choice to become a mother. Alternative options to abortion, especially adoption, should receive federal and state support.

In summary, the next President has a moral responsibility to lead the nation in restoring a culture of life in America again.

PROMISE #2: DISMANTLE THE ADMINISTRATIVE STATE AND RETURN SELF-GOVERNANCE TO THE AMERICAN PEOPLE.

Of course, the surest way to put the federal government back to work for the American people is to reduce its size and scope back to something resembling the original constitutional intent. Conservatives desire a smaller government not for its own sake, but for the sake of human flourishing. But the Washington Establishment doesn't *want* a constitutionally limited government because it means they lose power and are held more accountable by the people who put them in power.

Like restoring popular sovereignty, the task of reattaching the federal government's constitutional and democratic tethers calls to mind Ronald Reagan's observation that "there are no easy answers, but there are simple answers."

In the case of making the federal government smaller, more effective, and accountable, the simple answer is the Constitution itself. The surest proof of this is how strenuously and creatively generations of progressives and many Republican insiders have worked to cut themselves free from the strictures of the 1789 Constitution and subsequent amendments.

Consider the federal budget. Under current law, Congress is required to pass a budget—*and* 12 issue-specific spending bills comporting with it—every single year. The last time Congress did so was in 1996. Congress no longer meaningfully budgets, authorizes, or categorizes spending.

Instead, party leaders negotiate one multitrillion-dollar spending bill—several thousand pages long—and then vote on it before anyone, literally, has had a chance to read it. Debate time is restricted. Amendments are prohibited. And all of this is backed up against a midnight deadline when the *previous* "omnibus" spending bill will run out and the federal government "shuts down."

This process is not designed to empower 330 million American citizens and their elected representatives, but rather to empower the party elites secretly negotiating without any public scrutiny or oversight.

In the end, congressional leaders' behavior and incentives here are no different from those of global elites insulating policy decisions—over the climate, trade, public health, you name it—from the sovereignty of national electorates. Public scrutiny and democratic accountability make life harder for policymakers—so they skirt it. It's not dysfunction; it's corruption.

And despite its gaudy price tag, the federal budget is not even close to the worst example of this corruption. That distinction belongs to the "Administrative State," the dismantling of which must a top priority for the next conservative President.

The term Administrative State refers to the policymaking work done by the bureaucracies of all the federal government's departments, agencies, and millions of employees. Under Article I of the Constitution, "*All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.*" That is, federal law is enacted only by elected legislators in both houses of Congress.

This exclusive authority was part of the Framers' doctrine of "separated powers." They not only split the federal government's legislative, executive, and judicial powers into different branches. They also gave each branch checks over the others. Under our Constitution, the legislative branch—Congress—is far and away the most powerful and, correspondingly, the most accountable to the people.

In recent decades, members of the House and Senate discovered that if they give away that power to the Article II branch of government, they can also deny responsibility for its actions. So today in Washington, most policy is no longer set by Congress at all, but by the Administrative State. Given the choice between being powerful but vulnerable or irrelevant but famous, most Members of Congress have chosen the latter.

Congress passes intentionally vague laws that delegate decision-making over a given issue to a federal agency. That agency's bureaucrats—not just unelected but seemingly un-fireable—then leap at the chance to fill the vacuum created by Congress's preening cowardice. The federal government is growing larger and less constitutionally accountable—even to the President—every year.

- A combination of elected and unelected bureaucrats at the Environmental Protection Agency quietly strangles domestic energy production through difficult-to-understand rulemaking processes;

- Bureaucrats at the Department of Homeland Security, following the lead of a feckless Administration, order border and immigration enforcement agencies to help migrants criminally enter our country with impunity;

- Bureaucrats at the Department of Education inject racist, anti-American, ahistorical propaganda into America's classrooms;

- Bureaucrats at the Department of Justice force school districts to undermine girls' sports and parents' rights to satisfy transgender extremists;

- Woke bureaucrats at the Pentagon force troops to attend "training" seminars about "white privilege"; and

- Bureaucrats at the State Department infuse U.S. foreign aid programs with woke extremism about "intersectionality" and abortion.[3]

Unaccountable federal spending is the secret lifeblood of the Great Awokening. Nearly every power center held by the Left is funded or supported, one way or another, through the bureaucracy by Congress. Colleges and school districts are funded by tax dollars. The Administrative State holds 100 percent of its power at the sufferance of Congress, and its insulation from presidential discipline is an unconstitutional fairy tale spun by the Washington Establishment to protect its turf. Members of Congress shield themselves from constitutional accountability often when the White House allows them to get away with it. Cultural institutions like public libraries and public health agencies are only as "independent" from public accountability as elected officials and voters permit.

Let's be clear: The most egregious regulations promulgated by the current Administration come from one place: the Oval Office. The President cannot hide behind the agencies; as his many executive orders make clear, his is the responsibility for the regulations that threaten American communities, schools, and families. A conservative President must move swiftly to do away with these vast abuses of presidential power and remove the career and political bureaucrats who fuel it.

Properly considered, restoring fiscal limits and constitutional accountability to the federal government is a continuation of restoring national sovereignty to the American people. In foreign affairs, global strategy, federal budgeting and policymaking, the same pattern emerges again and again. Ruling elites slash and tear at restrictions and accountability placed on them. They centralize power up and away from the American people: to supra-national treaties and organizations, to left-wing "experts," to sight-unseen all-or-nothing legislating, to the unelected career bureaucrats of the Administrative State.

As monolithic as the Left's institutional power appears to be, it originates with appropriations from Congress and is made complete by a feckless President. A conservative President must look to the legislative branch for decisive action. The Administrative State is not going anywhere until Congress acts to retrieve its own power from bureaucrats and the White House. But in the meantime, there are many executive tools a courageous conservative President can use to handcuff the bureaucracy, push Congress to return to its constitutional responsibility, restore power over Washington to the American people, bring the Administrative State to heel, and in the process defang and defund the woke culture warriors who have infiltrated every last institution in America.

The Conservative Promise lays out how to use many of these tools including: how to fire supposedly "un-fireable" federal bureaucrats; how to shutter wasteful and corrupt bureaus and offices; how to muzzle woke propaganda at *every* level of government; how to restore the American people's constitutional authority over the Administrative State; and how to save untold taxpayer dollars in the process.

Finally, the President can restore public confidence and accountability to our most important government function of all: national defense. The American people desire a military full of highly skilled servicemen and women who can protect the homeland and our interests overseas. The next conservative President must end the Left's social experimentation with the military, restore *warfighting* as its sole mission, and set defeating the threat of the Chinese Communist Party as its highest priority.

The next conservative President must possess the courage to relentlessly put the interests of the everyday American over the desires of the ruling elite. Their outrage cannot be prevented; it must simply be ignored. And it can be. The Left derives its power from the institutions they control. But those institutions are only powerful to the extent that constitutional officers surrender their own legitimate authority to them. A President who refuses to do so and uses his or her office to reimpose constitutional authority over federal policymaking can begin to correct decades of corruption and remove thousands of bureaucrats from the positions of public trust they have so long abused.

PROMISE #3: DEFEND OUR NATION'S SOVEREIGNTY, BORDERS, AND BOUNTY AGAINST GLOBAL THREATS.

The United States belongs to "We the people." All government authority derives from the consent of the people, and our nation's success derives from the character of its people. The American people's right to rule ourselves is the obverse of our duty: We cannot outsource to others our obligation to ensure the conditions that allow our families, local communities, churches and synagogues, and neighborhoods to thrive. The buck stops with each of us, so each of us must have the freedom to pursue the good for ourselves and those entrusted to our care.

To most Americans, this is common sense. But in Washington, D.C. and other centers of Leftist power like the media and the academy, this statement of basic civics is branded hate speech. Progressive elites speak in lofty terms of *openness, progress, expertise, cooperation*, and *globalization*. But too often, these terms are just rhetorical Trojan horses concealing their true intention—stripping "we the people" of our constitutional authority over our country's future.

America's corporate and political elites do not believe in the ideals to which our nation is dedicated—self-governance, the rule of law, and ordered liberty. They certainly do not trust the American people, and they disdain the Constitution's restrictions on their ambitions.

Instead, they believe in a kind of 21st century Wilsonian order in which the "enlightened," highly educated managerial elite runs things rather than the humble, patriotic working families who make up the majority of what the elites contemptuously call "fly-over country."

This Wilsonian hubris has spread like a cancer through many of America's largest corporations, its public institutions, and its popular culture. Those who run our so-called American corporations have bent to the will of the woke agenda and care more for their foreign investors and organizations than their American workers and customers. Today, nearly every top-tier U.S. university president or Wall Street hedge fund manager has more in common with a socialist, European head of state than with the parents at a high school football game in Waco, Texas. Many elites' entire identity, it seems, is wrapped up in their sense of superiority over *those people*. But under our Constitution, they are the *mere equals* of the workers who shower *after* work instead of before.

This is as it should and must be. Intellectual sophistication, advanced degrees, financial success, and all other markers of elite status have no bearing on a person's knowledge of the one thing most necessary for governance: what it means to live well. That knowledge is available to each of us, no matter how humble our backgrounds or how unpretentious our attainments. It is open to us to read in the book of human nature, to which we are all offered the key just by merit of our shared humanity. One of the great premises of American political life is that everyone who can read in that book must have a voice in deciding the course and fate of our Republic.

Progressive policymakers and pundits in America either fail to understand this premise or intentionally reject it. They enthusiastically support supranational organizations like the United Nations and European Union, which are run and staffed almost entirely by people who share their values and are mostly insulated from the influence of national elections. That's why they are eager for America to sign international treaties on everything from pharmaceutical patents to climate change to "the rights of the child"—and why those treaties invariably endorse policies that could *never* pass through the U.S. Congress. Like the progressive Woodrow

Wilson a century ago, the woke Left today seeks a world, bound by global treaties *they write*, in which *they* exercise dictatorial powers over all nations without being subject to democratic accountability.

That's why today's progressive Left so cavalierly supports open borders despite the lawless humanitarian crisis their policy created along America's southern border. They seek to purge the very concept of the nation-state from the American ethos, no matter how much crime increases or resources drop for schools and hospitals or wages decrease for the working class. Open-borders activism is a classic example of what the German theologian Dietrich Bonhoeffer called "cheap grace"—publicly promoting one's own virtue without risking any personal inconvenience. Indeed, the only direct impact of open borders on pro-open borders elites is that the constant flow of illegal immigration suppresses the wages of their housekeepers, landscapers, and busboys.

"Cheap grace" aptly describes the Left's love affair with environmental extremism. Those who suffer most from the policies environmentalism would have us enact are the aged, poor, and vulnerable. It is not a political cause, but a pseudo-religion meant to baptize liberals' ruthless pursuit of absolute power in the holy water of environmental virtue.

At its very heart, environmental extremism is decidedly anti-human. Stewardship and conservation are supplanted by population control and economic regression. Environmental ideologues would ban the fuels that run almost all of the world's cars, planes, factories, farms, and electricity grids. Abandoning confidence in human resilience and creativity in responding to the challenges of the future would raise impediments to the most meaningful human activities. They would stand human affairs on their head, regarding human activity itself as fundamentally a threat to be sacrificed to the god of nature.

The same goals are the heart of elite support for economic globalization. For 30 years, America's political, economic, and cultural leaders embraced and enriched Communist China and its genocidal Communist Party while hollowing out America's industrial base. What may have started out with good intentions has now been made clear. Unfettered trade with China has been a catastrophe. It has made a handful of American corporations enormously profitable while twisting their business incentives *away* from the American people's needs. For a generation, politicians of both parties promised that engagement with Beijing would grow our economy while injecting American values into China. The opposite has happened. American factories have closed. Jobs have been outsourced. Our manufacturing economy has been financialized. And all along, the corporations profiting failed to export our values of human rights and freedom; rather, they imported China's anti-American values into their C-suites.

Even before the rise of Big Tech, Wall Street ignored China's serial theft of American intellectual property. It outright cheered the elimination of American

manufacturing jobs. ("Learn to code!" they would gloat.) These were just the price of progress. Engagement was at every step *Beijing*'s project, not America's. The Chinese Communist Party (CCP) dictated terms, only to break them whenever it suited them. They stole our technology, spied on our people, and threatened our allies, all with trillions of dollars of wealth and military power financed by their access to *our* market.

Then came the rise of Big Tech, which is now less a *contributor* to the U.S. economy than it is a tool of China's government. In exchange for cheap labor and regulatory special treatment from Beijing, America's largest technology firms funnel data about Americans to the CCP. They hand over sensitive intellectual property with military and intelligence applications to keep the money rolling in. They let Beijing censor Chinese users on their platforms. They let the CCP set their corporate policies about mobile apps. And they run interference for our rival's political priorities in Washington. One side of Big-Tech companies' business model is old-fashioned American competitiveness and world-changing technological innovation; but increasingly, that side of these businesses is overshadowed by their role as operatives in the lucrative employ of America's most dangerous international enemy.

If you want to understand the danger posed by collaboration between Big Tech and the CCP, look no further than TikTok. The highly addictive video app, used by 80 million Americans every month and overwhelmingly popular among teenage girls, is in effect a tool of Chinese espionage. The ties between TikTok and the Chinese government are not loose, and they are not coincidental.

The same can be observed of many U.S. colleges and universities. Through the CCP's Confucius Institutes, Beijing has been just as successful at compromising and coopting our higher education system as they have at compromising and coopting corporate America.

A casual reader might take the last few pages as surveying a broad array of challenges facing the American people and the next conservative President: supranational policymaking, border security, globalization, engagement with China, manufacturing, Big Tech, and Beijing-compromised colleges.

But these really are not many issues, but two: (1) that China is a totalitarian enemy of the United States, not a strategic partner or fair competitor, and (2) that America's elites have betrayed the American people. The solution to *all of the above* problems is not to tinker with this or that government program, to replace this or that bureaucrat. These are problems not of technocratic efficiency but of national sovereignty and constitutional governance. We solve them not by trimming and reshaping the leaves but by ripping out the trees—root and branch.

International organizations and agreements that erode our Constitution, rule of law, or popular sovereignty should not be reformed: They should be abandoned. Illegal immigration should be ended, not mitigated; the border sealed, not

reprioritized. Economic engagement with China should be ended, not rethought. Our manufacturing and industrial base should be restored, not allowed to deteriorate further. Confucius Institutes, TikTok, and any other arm of Chinese propaganda and espionage should be outlawed, not merely monitored. Universities taking money from the CCP should lose their accreditation, charters, and eligibility for federal funds.

The next conservative President should go beyond merely defending America's energy interests but go on offense, asserting them around the world. America's vast reserves of oil and natural gas are not an environmental problem; they are the lifeblood of economic growth. American dominance of the global energy market would be a good thing: for the world, and, more importantly, for "*we the people*." It's not just about jobs, even though unleashing domestic energy production would create millions of them. It's not just about higher wages for workers who didn't go to college, though they would receive the raises they have missed out on for two generations. Full-spectrum strategic energy dominance would facilitate the reinvigoration of America's entire industrial and manufacturing sector as we disentangle our economy from China. Globally, it would rebalance power away from dangerous regimes in Russia and the Middle East. It would build powerful alliances with fast-growing nations in Africa and provide us the leverage to counter Chinese ambitions in South America and the Pacific. Locally, it would drive billions of dollars of private investment to the communities that have been hammered by globalization since the 1990s. And it would clarify our intentions to Beijing that the next President can ensure that a large part of America's reindustrialization is in the production of the equipment we will need to dissuade future foreign meddling with U.S. vital interests.

PROMISE #4 SECURE OUR GOD-GIVEN INDIVIDUAL RIGHT TO ENJOY "THE BLESSINGS OF LIBERTY."

The Declaration of Independence famously asserted the belief of America's Founders that "all men are created equal" and endowed with God-given rights to "Life, Liberty, and the pursuit of Happiness." It's the last—"the pursuit of Happiness"—that is central to America's heroic experiment in self-government.

When the Founders spoke of "pursuit of Happiness," what they meant might be understood today as in essence "pursuit of Blessedness." That is, an individual must be free to live as his Creator ordained—to flourish. Our Constitution grants each of us the liberty to do not what we want, but what we ought. This pursuit of the good life is found primarily in family—marriage, children, Thanksgiving dinners, and the like. Many find happiness through their work. Think of dedicated teachers or health care professionals you know, entrepreneurs or plumbers throwing themselves into their businesses—anyone who sees a job well done as a personal reward. Religious devotion and spirituality are the greatest sources of happiness

around the world. Still others find themselves happiest in their local voluntary communities of friends, their neighbors, their civic or charitable work.

The American Republic was founded on principles prioritizing and maximizing individuals' rights to live their best life or to enjoy what the Framers called "the Blessings of Liberty." It's this radical equality—liberty for all—not just of rights but of authority—that the rich and powerful have hated about democracy in America since 1776. They resent Americans' audacity in insisting that we don't need them to tell us how to live. It's this inalienable right of self-direction—of each person's opportunity to direct himself or herself, and his or her community, to the good—that the ruling class disdains.

With the Declaration and Constitution, our nation's Founders handed to us the means with which to preserve this right. Abraham Lincoln wrote of the Declaration as an "apple of gold" in a silver frame, the Constitution. So must the next conservative President look to these documents when the elites mount their next assault on liberty.

Left to our own devices, the American people rejected European monarchy and colonialism just as we rejected slavery, second-class citizenship for women, mercantilism, socialism, Wilsonian globalism, Fascism, Communism, and (today) wokeism. To the Left, these assertions of patriotic self-assurance are just so many signs of our moral depravity and intellectual inferiority—proof that, in fact, we need a ruling elite making decisions for us.

But the next conservative President should be proud, not ashamed of Americans' unique culture of social equality and ordered liberty. After all, the countries where Marxist elites have won political and economic power are all weaker, poorer, and less free for it.

The United States remains the most innovative and upwardly mobile society in the world. Government should stop trying to substitute its own preferences for those of the people. And the next conservative President should champion the dynamic genius of free enterprise against the grim miseries of elite-directed socialism.

The promise of socialism—Communism, Marxism, progressivism, Fascism, whatever name it chooses—is simple: Government control of the economy can ensure equal outcomes for all people. The problem is that it has never done so. There is no such thing as "the government." There are just people who work for the government and wield its power and who—at almost every opportunity—wield it to serve themselves first and everyone else a distant second. This is not a failing of one nation or socialist party, but inherent in human nature.

Nighttime satellite images of the Korean peninsula famously show the free-market South lit up, with homes, businesses, and cities electrified from coast to coast. By contrast, Communist North Korea is almost completely dark, except for the small dot of the capital city, Pyongyang, where a psychotic dictator and his cronies

live. The same phenomenon is on display in the infuriating fact that four of the six richest counties in the United States are suburbs of Washington, D.C.—a city infamous for its lack of native productive industries.

We see the same corruption expressed on an individual level whenever billionaire climate activists, who want to outlaw carbon-fueled transportation, fly to A-list conferences on their private jets. Or when COVID-19 shutdown politicians like former House Speaker Nancy Pelosi and California Governor Gavin Newsom were caught at the hair salon or dining at fancy restaurants after moralizing about how everyone else must stay home and forgo such luxuries during the pandemic. For socialists, who are almost always well-to-do, socialism is not a means of equalizing outcomes, but a means of accumulating power. They never get around to helping anyone else.

The Soviet empire was a social and economic failure. North Korea, despite the opulence of its tyrants, is one of the poorest nations in the world. Cuba is so corrupt that its people regularly risk their lives to escape to Florida on rafts. Venezuela was once the richest nation in South America; today, a decade after a Marxist dictator took over, 94 percent of Venezuelans live in poverty.[4] Even socialist Senator Bernie Sanders' home state of Vermont was forced to repeal the state's single-payer health care system just three years after creating it.

In every case, socialist elites promised that if only they could direct the economy, everything would be better. Very quickly, everything got worse. In socialist nation after socialist nation, the only way the government could keep its disgruntled people in line was to surveil and terrorize them.

By contrast, in countries with a high degree of economic freedom, elites are not in charge because *everyone* is in charge. People work, build, invest, save, and create according to their own interests and in service to the common good of their fellow citizens.

There is a reason why the private economy hews to the maxim "the customer is always right" while government bureaucracies are notoriously user-unfriendly, just as there is a reason why private charities are cheerful and government welfare systems are not. It's not because grocery store clerks and PTA moms are "good" and federal bureaucrats are "bad." It's because private enterprises—for-profit or nonprofit—must cooperate, to give, to succeed.

So as the American people take back their sovereignty, constitutional authority, respect for their families and communities, they should also take back their right to pursue the good life.

The next President should promote pro-growth economic policies that spur new jobs and investment, higher wages, and productivity. Yes, that agenda should include overdue tax and regulatory reform, but it should go further and include antitrust enforcement against corporate monopolies. It should promote educational opportunities outside the woke-dominated system of public schools and

universities, including trade schools, apprenticeship programs, and student-loan alternatives that fund students' dreams instead of Marxist academics. Just as important as expanding opportunities for workers and small businesses, the next President should crack down on the crony capitalist corruption that enables America's largest corporations to profit through political influence rather than competitive enterprise and customer satisfaction.

Analogous pro-growth reforms for America's voluntary civil society are also in order. America is not an economy; it is a country. Economic freedom is not the only important freedom. Freedom of religion, freedom of speech, and the freedom to assemble also represent key components of the American promise. Today, in addition to the problem of Big Tech censorship, we see speakers at universities shouted down, parents investigated and arrested for attempting to speak at school board meetings, and donors to conservative causes harassed and intimidated. The next conservative President must defend our First Amendment rights.

BEST EFFORT

Ultimately, the Left does not believe that all men are created equal—they think *they* are special. They certainly don't think all people have an unalienable right to pursue the good life. They think *only they themselves* have such a right along with a moral responsibility to make decisions for everyone else. They don't think any citizen, state, business, church, or charity should be allowed *any* freedom until they first bend the knee.

This book, this agenda, the entire Project 2025 is a plan to unite the conservative movement and the American people against elite rule and woke culture warriors.

Our movement has not been united in recent years, and our country has paid the price. In the past decade, though, the breakdown of the family, the rise of China, the Great Awokening, Big Tech's abuses, and the erosion of constitutional accountability in Washington have rendered these divisions not just inconvenient but politically suicidal. Every hour the Left directs federal policy and elite institutions, our sovereignty, our Constitution, our families, and our freedom are a step closer to disappearing.

Conservatives have just two years and one shot to get this right. With enemies at home and abroad, there is no margin for error. Time is running short. If we fail, the fight for the very idea of America may be lost.

But we should take this small window of opportunity we have left to act with courage and confidence, not despair. The last time our nation and movement were so near defeat, we rallied together behind a great leader and great ideas, transcended our differences, rescued our nation, and changed the world. It's time to do it again.

Now, as then, we know who we are fighting and what we are fighting for: for our Republic, our freedom, and for each other. The next conservative President

will enter office on January 20, 2025, with a simple choice: greatness or failure. It will be a daunting test, but no more so than every generation of Americans has faced and passed.

The Conservative Promise represents the best effort of the conservative movement in 2023—and the next conservative President's last opportunity to save our republic.

ENDNOTES

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Section One

TAKING THE REINS OF GOVERNMENT

America's Bicentennial, which culminated on July 4, 1976, was a spirited and unifying celebration of our country, its Founding, and its ideals. As we approach our nation's 250th anniversary, which will take place during the next presidency, America is now divided between two opposing forces: woke revolutionaries and those who believe in the ideals of the American revolution. The former believe that America is—and always has been—"systemically racist" and that it is not worth celebrating and must be fundamentally transformed, largely through a centralized administrative state. The latter believe in America's history and heroes, its principles and promise, and in everyday Americans and the American way of life. They believe in the Constitution and republican government. Conservatives—the Americanists in this battle—must fight for the soul of America, which is very much at stake.

Just two years after the death of the last surviving Constitutional Convention delegate, James Madison, Abraham Lincoln warned that the greatest threat to America would come not from without, but from within. This is evident today: Whether it be mask and vaccine mandates, school and business closures, efforts to keep Americans from driving gas cars or using gas stoves, or efforts to defund the police, indoctrinate schoolchildren, alter beloved books, abridge free speech, undermine the colorblind ideal, or deny the biological reality that there are only two sexes, the Left's steady stream of insanity appears to be never-ending. The next Administration must stand up for American ideals, American families, and American culture—all things in which, thankfully, most Americans still believe.

Highlighting this need, former director of the Office of Management and Budget Russ Vought writes in Chapter 2, "The modern conservative President's task is to

limit, control, and direct the executive branch on behalf of the American people." At the core of this goal is the work of the White House and the central personnel agencies. Article II of the Constitution vests all federal executive power in a President, made accountable to the citizenry through regular elections. Our Founders wrote, "The executive Power shall be vested in a President of the United States of America." Accordingly, Vought writes, "it is *the President's agenda* that should matter to the departments and agencies," not their own.

Yet the federal bureaucracy has a mind of its own. Federal employees are often ideologically aligned—not with the majority of the American people—but with one another, posing a profound problem for republican government, a government "of, by, and for" the people. As Donald Devine, Dennis Kirk, and Paul Dans write in Chapter 3, "An autonomous bureaucracy has neither independent constitutional status nor separate moral legitimacy." Byzantine personnel rules provide the bureaucrats with their chief means of self-protection. What's more, knowledge of such rules is used to thwart the President's appointees and agenda. As Devine, Kirk, and Dans write, "Managing the immense bureaucracy of the federal government is impossible without an understanding of the key central personnel agencies and their governing laws and regulations."

Many of these laws and regulations governing a largely underworked, overcompensated, and unaccountable federal civilian workforce are so irrational that they would be comical in a less important context. This is true whether it comes to evaluating employees' performance or hiring new employees. Only in the federal government could an applicant in the hiring process be sent to the *front* of the line because of a "history of drug addiction" or "alcoholism," or due to "morbid obesity," "irritable bowel syndrome," or a "psychiatric disorder." The next Administration should insist that the federal government's hiring, evaluation, retention, and compensation practices benefit taxpayers, rather than benefiting the lowest rung of the federal workforce.

In order to carry out the President's desires, political appointees must be given the tools, knowledge, and support to overcome the federal government's obstructionist Human Resources departments. More fundamentally, the new Administration must fill its ranks with political appointees. Devine, Kirk, and Dans observe that "the Trump Administration appointed fewer political appointees in its first few months in office" than any other recent presidency. This left career employees in charge in many places. This can occur even after departments have been fully staffed with political appointees. Vought writes that the White House Office of Management and Budget (OMB) should establish a "reputation as the keeper of 'commander's intent,'" yet OMB is dominated by career employees who often try to overrule political appointees serving in the various executive departments. Empowering political appointees across the Administration is crucial to a President's success.

Above all, the President and those who serve under him or her must be committed to the Constitution and the rule of law. This is particularly true of a conservative Administration, which knows that the President is there to uphold the Constitution, not the other way around. If a conservative Administration does not respect the Constitution, no Administration will. In Chapter 1, former deputy chief of staff to the President Rick Dearborn writes that the White House Counsel "must take seriously the duty to protect the powers and privileges of the President from encroachments by Congress, the judiciary, and the administrative components of departments and agencies." Equally important, the President must enforce the Constitution and laws as written, rather than proclaiming new "law" unilaterally. Presidents should not issue mask or vaccine mandates, arbitrarily transfer student loan debt, or issue monarchical mandates of any sort. Legislatures make the laws in a republic, not executives.

It is crucial that all three branches of the federal government respect what Madison called the "double security" to our liberties: the separation of powers among the three branches, and the separation of powers between the federal government and the states. This double security has been greatly compromised over the years. Vought writes that "the modern executive branch…writes federal policy, enforces that policy, and often adjudicates whether that policy was properly drafted and enforced." He describes this as "constitutionally dire" and "in urgent need of repair," adding: "Nothing less than the survival of self-governance in America is at stake."

When it comes to ensuring that freedom can flourish, nothing is more important than deconstructing the centralized administrative state. Political appointees who are answerable to the President and have decision-making authority in the executive branch are key to this essential task. The next Administration must not cede such authority to non-partisan "experts," who pursue their own ends while engaging in groupthink, insulated from American voters. The following chapters detail how the next Administration can be responsive to the American people (not to entrenched "elites"); how it can take care that all the laws are "faithfully executed," not merely those that the President desires to see executed; and how it can achieve results and not be stymied by an unelected bureaucracy.

1

WHITE HOUSE OFFICE

Rick Dearborn

From popular culture to academia, the American presidency has long been a prominent fixture of the national imagination—naturally so since it is the beating heart of our nation's power and prestige. It has played, for instance, a feature role in innumerable movies and television shows and has been prodded, analyzed, and critiqued by countless books, essays, and studies. But like nearly everything else in life, there is no substitute for firsthand experience, which this manual has compiled from the experience of presidential appointees and provides in accessible form for future use.

With respect to the presidency, it is best to begin with our Republic's foundational document. The Constitution gives the "executive Power" to the President.[1] It designates him as "Commander in Chief"[2] and gives him the responsibility to "take Care that the Laws be faithfully executed."[3] It further prescribes that the President might seek the assistance of "the principal Officer in each of the executive Departments."[4] Beginning with George Washington, every President has been supported by some form of White House office consisting of direct staff officers as well as a Cabinet comprised of department and agency heads.

Since the inaugural Administration of the late 18th century, citizens have chosen to devote both their time and their talent to defending and strengthening our nation by serving at the pleasure of the President. Their shared patriotic endeavor has proven to be a noble one, not least because the jobs in what is now known as the White House Office (WHO) are among the most demanding in all of government.

The President must rely on the men and women appointed to the WHO. There simply are not enough hours in the day to manage the affairs of state single-handedly,

so delegation is not just advisable: It is essential. The decisions that assistants and senior advisers make will directly impact the Administration, its legacy, and—most important—the fate of the country. Their agenda must therefore be the President's agenda. Choosing who will carry out that agenda on a daily basis is not only one of the first decisions a President makes in office, but also one of the most critical. The tone and tempo of an administration are often determined on January 20.

CHIEF OF STAFF

As with most of the positions that will be covered in this first chapter, the Chief of Staff is also an Assistant to the President. However, the chief is truly first among equals. Of all presidential staff members, the chief is the most critical to implementation of the President's vision for the country. The chief also has a dual role as manager of the staffs of both the WHO and the Executive Office of the President (EOP).[5]

The Chief of Staff's first managerial task is to establish an organizational chart for the WHO. It should be simple and contain clear lines of authority and responsibility to avoid conflicts. It should also identify specific points of contact for each element of the government outside of the White House. These contacts should include the White House Liaisons who are selected by the Office of Presidential Personnel (PPO).

Receiving guidance from the President, the chief endeavors to implement the President's agenda by setting priorities for the WHO. This process begins by taking stock of the President's campaign promises, identifying current and prospective opportunities, and then delegating policy priorities among the departments and agencies of the Cabinet and throughout the three White House policy councils:

- The National Economic Council (NEC);
- The Domestic Policy Council (DPC); and
- The National Security Council (NSC).

The President is briefed on all of his policy priorities by his Cabinet and senior staff as directed by the chief. The chief—along with senior WHO staff—maps out the issues and themes that will be covered daily and weekly. The chief then works with the policy councils, the Cabinet, and the Office of Communications and Office of Legislative Affairs (OLA) to sequence and execute the rollout of policies and announcements. White House Counsel and senior advisers and senior counselors are also intimately involved.

All senior staff report to the Chief of Staff, either directly or through his two or three deputies, unless the President determines that a particular Assistant to the President reports directly to him. Most chiefs have interacted directly with

Cabinet officers and a select number of direct reports. In most cases, the direct reports to the chief are his two or three deputies, the Communications Director, PPO Director, White House Counsel, and senior advisers. Occasionally, the Office of Public Liaison (OPL), the Cabinet Secretary, and Intergovernmental Affairs (IGA) also report directly to the chief. Usually, however, they report instead to a Deputy Chief of Staff.

The Chief of Staff's main challenge is time management. His use of his deputies, meetings with senior staff, and direction provided to the WHO must all balance with the daily needs of the President. A successful chief steers the West Wing using his management of and influence with the various individuals and entities around him. It goes without saying that selecting the right person to be chief is vital.

DEPUTY CHIEFS OF STAFF

In recent years, Presidents typically have appointed two Deputy Chiefs of Staff: a Deputy Chief of Staff for Management and Operations and a Deputy Chief of Staff for Policy. There also have been other types of deputy chiefs whose roles have included, for example, overseeing strategy, planning, and implementation. Chiefs of Staff have then occasionally appointed a principal Deputy Chief to be in charge of guiding decision-making, organizational structure, and information flow.

PRINCIPAL DEPUTY CHIEFS OF STAFF

Not all Chiefs of Staff have tapped a principal deputy. A major reason is that doing so adds another layer of command complexity. When principal deputies have been installed, their roles have varied based on the needs of particular chiefs.

Most principal deputies have functioned as doorkeepers, sorting through action items, taking on those that can be handled at their own level, and passing up others that truly require the attention of the Chief of Staff or the President. Principal deputies also have assumed control of the scheduling functions, normally under the operations deputy, and have worked directly with the policy councils at the direction of the Chief of Staff. The OPL and Office of Political Affairs (OPA) also have reported to a principal deputy.

Deputy Chief of Staff for Management and Operations. The Deputy Chief of Staff for Management and Operations oversees the President's schedule and all logistical aspects of his movement within and outside of the White House (for example, both air travel on Air Force One and Marine One and ground transportation). This deputy also interfaces directly with the Secret Service as well as the military offices tasked with keeping the President and his family safe.

In the past, this deputy has also worked with the NSC, the Secretary of Defense, the Secretary of State, and the Intelligence Community and on advancing all foreign trips. If their roles are separated from that of the policy deputy, this deputy should have a strong grasp of international affairs and robust foreign policy credentials.

This deputy further manages all facets of the working White House: technology, grounds management, support staff, personnel administration, and communications. This individual therefore needs to be meticulous and ideally should possess a great deal of command-and-control experience.

Deputy Chief of Staff for Policy. In some Administrations, the functions of the IGA, OPA, and OPL and other advisers within the WHO have fallen under the Deputy Chief of Staff for Policy. For conservatives, this arrangement could help to connect the WHO's outreach to political and external groups and be a strong conduit for state and local elected officials, state party organizations, and both grasstop and grassroots groups.

This deputy chief works directly with the Chief of Staff, Cabinet officers, and all three policy councils to support the development and implementation of the President's agenda. This deputy chief should therefore have impressive policy credentials in the realms of economic, domestic, and social affairs.

SENIOR ADVISERS

Presidents have surrounded themselves with senior advisers whose experience and interests are not necessarily neatly defined. In recent Administrations, senior advisers have been appointed to offer broad guidance on political matters and communications issues; others have acted as "czars" for specific projects or policy areas.

The most powerful senior advisers frequently have had a long personal relationship with the President and often have spent a significant amount of time with him within and outside of the White House. They have been asked not only to provide guidance on a variety of policy issues, but also to offer instruction on communicating with the American people and the media.

In a number of Administrations, new offices—or "councils"—have been created to support senior advisers. For the most part, their functions have been duplicative or overlapping, as a result of which these offices have tended to be short-lived. Even so, senior advisers should be provided the staff and resources that their portfolios require. To ensure that senior advisers are effective, their portfolios must be clearly delineated and clearly communicated across the White House. This too is a responsibility of the Chief of Staff.

OFFICE OF WHITE HOUSE COUNSEL

The Office of White House Counsel provides legal guidance to the President and elements of the EOP on a host of issues, including presidential powers and privileges, ethics compliance, review of clemency applications, and judicial nominations. The selection of White House Counsel is one of the most important decisions an incoming President will make. The office is not designed to create or advance policies on its own initiative—nor should it do so. Rather, it is dedicated to guiding

the President and his reports on how (within the bounds of the law) to pursue and realize the President's agenda.

While the White House Counsel does not serve as the President's personal attorney in nonofficial matters, it is almost impossible to delineate exactly where an issue is strictly personal and has no bearing on the President's official function. The White House Counsel needs to be deeply committed both to the President's agenda and to affording the President proactive counsel and zealous representation. That individual directly advises the President as he performs the duties of the office, and this requires a relationship that is built on trust, confidentiality, and candor.

The Office of White House Counsel is also responsible for ensuring that each component of the White House adheres to all applicable legal and ethical guidelines, which often requires ongoing training and monitoring to ensure compliance. This means ensuring that White House staff regularly consult with office attorneys on required financial disclosures, received gifts, potential conflicts of interest, and other ethical concerns. The Office of White House Counsel is the first line of defense for the EOP. Its staff must take seriously the duty to protect the powers and privileges of the President from encroachments by Congress, the judiciary, and the administrative components of departments and agencies.

In addition to the White House Counsel, the office includes deputies, assistants, associates, and legal support staff. The assistant and associate attorneys are often specialists in particular areas of the law and offer guidance to the EOP on issues related to national security, criminal law, environmental law, and a host of administrative and regulatory matters. Attorneys working in the Office of White House Counsel serve as legal advisers to the White House policy operation by reviewing executive orders, agency regulations, and other policy-related functions. Here again, subordinates should be deeply committed to the President's agenda and see their role as helping to accomplish the agenda through problem solving and advocacy. They should not erect roadblocks out of an abundance of caution; rather, they should offer practical legal advice on how to promote the President's agenda within the bounds of the law.

The White House Counsel's office cannot serve as a finishing school to credential the next set of white-shoe law firm attorneys or federal judges in waiting who cabin their opinions for fear their elite credentials could be tarnished through a policy disagreement. Rather, it should function more as an activist yet ethical plaintiffs' firm that advocates for its client—the Administration's agenda—within the limits imposed by the Constitution and the duties of the legal profession.

The Office of White House Counsel also serves as the primary gateway for communication between the White House and the Department of Justice (DOJ). Traditionally, both the White House Counsel and the Attorney General have issued a memo requiring all contact between the two institutions to occur only between the Office of White House Counsel and the Attorney General or Deputy Attorney

General. The next Administration should reexamine this policy and determine whether it might be more efficient or more appropriate for communication to occur through additional channels. The White House Counsel also works closely with the DOJ Office of Legal Counsel to seek opinions on, for example, matters of policy development and the constitutionality of presidential power and privileges and with OLA and the DOJ Office of Legal Policy on presidential judicial nominees.

When a new President takes office, he will need to decide expeditiously how to handle any major ongoing litigation or other pending legal matters that might present a challenge to his agenda. To offer guidance, the White House Counsel must get up to speed as quickly as possible on all significant ongoing legal challenges across the executive branch that might affect the new Administration's policy agenda and must be prepared at the outset of the Administration to present recommendations to the President, including recommendations for reconsidering or reversing positions of the previous Administration in any significant litigation. This review will usually require consulting with the new political leadership at the Justice Department, including during the transition period.

No day is predictable at the White House. Therefore, to handle the pace and volatility of affairs, the Office of White House Counsel must offer measured legal guidance in a timely manner. This often means forgoing law review–style memos about esoteric legal concepts and instead quickly providing high-level yet incisive guidance. Due to evolving world events, domestic affairs, and political pressures, the office often faces legal questions for which there may not be a wealth of precedent. Attorneys in the Office of White House Counsel must therefore work collaboratively within the White House and the Department of Justice, relying on each other as a team, to ensure that proper legal guidance is delivered to the President.

The President should choose a White House Counsel who is well-versed in the Constitution, administrative and regulatory law, and the inner workings of Congress and the political process. Instead of choosing a specialist, the President should hire a counsel with extensive experience with a wide range of complex legal subjects. Moreover, while a candidate with elite credentials might seem ideal, the best one will be above all loyal to the President and the Constitution.

STAFF SECRETARY

The Office of the Staff Secretary is rarely visible to the outside world, but it performs work of tremendous importance. The office is similar to a military commander's adjutant as it is responsible for fielding and managing a vast amount of information at the top of its organization. This includes information on its way into the Oval Office as well as information flowing out from the Oval Office. Because of its gatekeeping function, the position of Staff Secretary is one of extreme trust, and the individual who possesses it should be vetted to work as an "honest broker" in the President's service.

The Office of the Staff Secretary has been described as the last substantive control point before papers reach the Oval Office. A great deal of information is headed toward the Oval Office at any moment. This includes presidential decision memos; bills passed by Congress (which may be accompanied by signing or veto statements); and briefing books, reading materials, samples of constituent mail, personal mail, and drafts of speeches. The Staff Secretary makes certain that these materials are complete, well-ordered, and up to date before they reach the President. This necessarily means that the Staff Secretary plays a key role in determining who weighs in on policy matters and when.

As noted above, the Staff Secretary also handles information leaving the Oval Office. The President may have questions after reviewing incoming material, may wish to seek more information, or may demand revisions. The Staff Secretary is often responsible for directing these requests to the appropriate places and following up on them to ensure that they are completed.

One of the Staff Secretary's critical functions is managing and overseeing the clearance process for the President's daily/nightly briefing book. This book is filled with all the reading material and leading documentation the President needs in the morning and the evening to help him make decisions. The Staff Secretary also oversees the use of the President's signature, whether by hand or by autopen, and manages the Office of the Executive Clerk, Office of Records Management, and Office of Presidential Correspondence.

OFFICE OF COMMUNICATIONS

The Office of Communications, which operates under the Director of Communications, conveys the President's agenda to the public through various media, including speeches and remarks, press briefings, off-the-record discussions with reporters, and social media. Depending on how a President chooses to structure his White House, the Office of Communications may include the Office of the Press Secretary (Press Office), but no matter how it is structured, the office must work closely with the Press Office as well as the President's speechwriters and digital strategists.

Operational functions of the Office of Communications include scheduling and running press briefings, interviews, meetings, media appearances, speeches, and a range of other events. The Office of Communications must maintain robust relationships with the White House Press Corps, the White House Correspondents' Association, regional stakeholders, and key interest groups. No legal entitlement exists for the provision of permanent space for media on the White House campus, and the next Administration should reexamine the balance between media demands and space constraints on the White House premises.

Leadership within the Office of Communications should include a Communications Director (who is a direct report to the Chief of Staff), a Deputy

Communications Director, a Deputy Director for Strategic Communications, and a Press Secretary. This leadership team must work together closely to drive the national narrative about the White House.

The best resource for the Office of Communications is the President. The President conveys the White House's overall message through one or two inaugural addresses, State of the Union addresses, speeches to Congress, and press conferences. The office must also ensure that the various White House offices disseminate a unified message to the public. The Communications Director and Press Secretary in particular should be careful to avoid contradicting the President or delivering conflicting information.

The speechwriting team is a critical component of the communications team. Speechwriting is a unique talent: The writers selected must understand policy, should have a firm grasp of history and other liberal-arts disciplines, and should be able to learn and adopt the President's style of rhetoric and mode of delivery.

The Press Secretary is the President's spokesperson, communicating to the American people through the media. The Press Secretary engages with the White House Press Corps formally through press briefings and informally through impromptu gaggles and meetings. Individuals who serve in this role must be quick on their feet, which means, when appropriate, deftly refuting and rebutting correspondents' questions and comments.

The Communications Director must convey the President's mission to the American people. Especially for conservatives, this means navigating the mainstream media to ensure that the President's agenda is conveyed effectively and accurately. The Communications Director must be politically savvy and very aware of the ongoing activities of the other White House offices. The new Administration should examine the nature of the relationship between itself and the White House Correspondents Association and consider whether an alternative coordinating body might be more suitable.

OFFICE OF LEGISLATIVE AFFAIRS (OLA)

Created by President Dwight Eisenhower, the OLA has continued to serve as the liaison between the White House and Congress. The White House must work with congressional leaders to ensure presidential nominees, for roles such as Cabinet secretaries and ambassadors, are confirmed by the Senate. The White House also relies on Congress to enact reforms promised by the President on the campaign trail, whether those promises relate to health care, education, or national defense. Because Congress holds the power of the purse, White House staffers must ensure that there is enough support on the Hill to secure the necessary funding through the appropriations process to fulfill the President's agenda.

The OLA reports directly to the Chief of Staff and in some Administrations has done so under the guidance of a Deputy Chief of Staff (usually the Deputy Chief

for Policy). Regardless of the person to whom the OLA reports, however, the office exercises a certain autonomy on behalf of the President and the Chief of Staff in directly influencing congressional leaders of both major political parties. The OLA often must function as the mediator among the parties and find common ground to facilitate the successful enactment of the President's agenda.

As is the case with many White House offices (but especially the Office of Communications), the OLA must ensure that congressional leaders receive one unified message. If other actors within the White House maintain their own relationships with congressional leaders and staffers, it may appear that the President's agenda is fractured and lacks consensus. This dynamic has caused real problems for many Presidents in the past.

Internally, OLA staffers need to be involved in policy discussions, budget reviews, and other important meetings. They must also provide advice to policy staffers regarding whether certain ideas are politically feasible. Externally, OLA staffers have to communicate continuously with congressional offices of both parties in both the House and the Senate to ensure that the President has enough support to enact his legislative priorities or sustain votes.

The OLA requires staffers who are effective communicators and can provide a dose of reality to other White House staffers when necessary. Although a policy proposal from within the White House may be a great idea, OLA staffers must ensure that it is politically feasible. OLA staffers must therefore be skilled in both politics and policy. Furthermore, the President should seek out individuals who can advance his agenda and at the same time forge pathways with members of the opposing political party on other priorities.

Most important, the OLA must function as a well-oiled machine: precisely synced. The President cannot afford to have a tennis player on—much less as the leader of—his football team.

OFFICE OF PRESIDENTIAL PERSONNEL (PPO)

The political axiom that "personnel is policy" was popularized under President Ronald Reagan during the 1981 presidential transition. One of the most important offices in the White House is the PPO, which was created under President Richard Nixon to centralize political appointments. Departments and agencies had and still have direct legal authority on hiring and firing, but the power to fill Schedule C positions—the core of political jobs—is vested with the President. Therefore, the White House, not the department or agency, has the final word on political appointments.

PPO's primary responsibility is to staff the executive branch with individuals who are equipped to implement the President's agenda. Although its focus should be identifying and recruiting leaders to fill the approximately 1,000 appointments that require Senate confirmation, PPO must also fill approximately 3,000 political jobs that require dedicated conservatives to support the Administration's political leadership.

Frequently, many medium-tier and top-tier jobs have been filled by policy experts tasked with accomplishing much of the work of the Administration. At the same time, appointees in the entry-level jobs have brought invaluable energy and commitment to the White House and have proved to be the "farm team" for the conservative movement.

The Office of Presidential Personnel is responsible for:

- Identifying potential political personnel both actively through recruitment and passively by fielding resumes and adjudicating requests from political actors.
- Vetting potential political personnel by conducting political background checks and reviewing any clearance and fitness assessments by departments and agencies.
- Making recommendations to the President and to other appointment authorities on behalf of the President.
- Identifying programmatic political workforce needs early and developing plans (for example, Schedule F).
- Maintaining a strong relationship with the Office of Personnel Management (OPM) both for operational purposes and to effectuate the President's direct Title 5 authorities. The President is in charge of the federal workforce and exercises control principally by working through the Director of the Office of Personnel Management.
- Training and connecting political personnel.
- Playing "bad cop" in a way that other White House offices cannot (including serving as the office that takes direct responsibility for firings and hirings).
- Serving as a personnel link between conservative organizations and the executive branch.

In most Administrations, PPO will staff more than 100 positions during a transition and thousands of noncareer positions during the President's first term. Direct authority and a strong relationship with the President are necessary attributes for any PPO Director. Historically, PPO has had direct review and control of personnel files, including security clearance dossiers.

At the highest level, PPO is tasked with long-term, strategic workforce development. The "billets" of political appointments are of immense importance in credentialing and training future leaders. In addition, whatever one's view of the constitutionality of various civil service rules (for example, the Federal Vacancies Reform Act of 1998[6]) might be, it is necessary to ensure that departments and agencies have robust cadres of political staff just below senior levels in the event of unexpected vacancies.

OFFICE OF POLITICAL AFFAIRS (OPA)

The OPA is the primary office within the executive branch for managing the President's political interests. Although its specific functions vary from Administration to Administration, the OPA typically serves as the liaison between the President and associated political entities: national committees, federal and state campaigns, and interest groups. Within legal guidelines, the OPA engages in outreach, conducts casework, and—if the President is up for reelection—assists with his campaign. The OPA may also monitor congressional campaigns, arrange presidential visits with other political campaigns, and recommend campaign staff to the Office of Presidential Personnel for service in the executive branch.

The OPA further serves as a line of communication between the White House and the President's political party. This includes both relaying the President's ambitions to political interests and listening to the needs of political interests. This relationship allows for the exchange of information between the White House and political actors across the country. The OPA should have one director of political affairs who reports either to the Chief of Staff or to a Deputy Chief of Staff. The OPA should also include various deputy directors, each of whom is responsible for a certain geographical region of the country.

Because nearly all White House activities are in some way inherently political, the OPA needs to be aware of all presidential actions and activities—including travel, policy decisions, speeches, nominations, and responses to matters of national security—and consider how they might affect the President's image. The OPA must therefore have a designated staffer who communicates not only with other White House offices, but also with the Cabinet and executive branch agencies.

OFFICE OF CABINET AFFAIRS (OCA)

The OCA's role has changed to some degree over the course of various Administrations, but its overriding function remains the same: to ensure the coordination of policy and communication between the White House and the Cabinet. Most important, the OCA coordinates all Cabinet meetings with the President. It should also organize and administer regular meetings of the Deputy Secretaries because they also typically serve vital roles in the departments and agencies and, further, often become acting secretaries when Cabinet members resign.

There should be one Cabinet Secretary who reports to the Chief of Staff's office, either directly or through a deputy chief, according to the chief's preference and focus. The Cabinet Secretary maintains a direct relationship with all members of the Cabinet.

The OCA further consists of deputies and special assistants who work with each department's principal, Deputy Secretary, Under Secretaries, Assistant Secretaries, and other senior staff. The OCA also connects the departments to WHO offices.

The OCA coordinates with the Chief of Staff's office and the Office of Communications to promote the President's agenda through the Cabinet departments and agencies. The Cabinet's communications staffers are obviously another critical component of this operation.

In prior Administrations, the OCA has played a vital role by tracking the President's agenda for the Chief of Staff, Deputy Chiefs, and senior advisers. It has worked with each department and agency to advance policy priorities. In the future, amplifying this function would truly benefit both the President and the conservative movement.

From time to time throughout an Administration, travel optics, ethics challenges, and Hatch Act[7] issues involving Cabinet members, deputies, and senior staffers can arise. The OCA is normally tasked with keeping the WHO informed of such developments and providing support if and when necessary.

The ideal Cabinet Secretary will have exceptional organizational skills and be a seasoned political operative or attorney. Because many Cabinet officials have been former presidential candidates, governors, ambassadors, and Members of Congress, the ideal candidate should also possess the ability to interact with and persuade accomplished individuals.

OFFICE OF PUBLIC LIAISON (OPL)

The OPL is critically important in building coalitions and support for the President's agenda across every aligned social, faith-based, minority, and economic interest group. It is a critical tool for shaping public opinion and keeping myriad supporters, as well as "frenemies" and opponents alike who are within reach, better informed.

The OPL is a notably large office. It should have one Director who reports to the Chief of Staff's office, either directly or through a deputy, according to the chief's preference and focus. The Director must maintain relationships not only with other WHO heads, but also with the senior staff of every Cabinet department and agency. Since a President's agenda is always in motion, it is important for the OPL to facilitate listening sessions to receive the views of the various leaders and members of key interest groups.

The OPL should also have a sufficient number of deputies and special assistants to cover the vast number of disparate interest groups that are engaged daily. The

OPL has, by far, held more meetings in the Eisenhower Executive Office Building (EEOB) and within the West Wing itself than any other office within the WHO.

The OPL is the chief White House enforcer and gatekeeper among these various interest groups. It has operated best whenever the Chief of Staff has given it permission to use both the proverbial "carrot" and the proverbial "stick." To make this work, communication with the chief's office is vital. Additionally, the OPL has had an outsized role in presidential scheduling and both official and political travel.

The OPL Director should come from the President's election campaign or Capitol Hill—but should not have deeply entrenched connections to a K Street entity or any other potential stakeholder. Some prior relationships can create real or perceived biases toward one group or another. The Director should be amiable, gregarious, highly organized, and willing to shoulder criticism and pushback from interest groups and other elements of the Administration.

Unlike the Director, OPL deputies and special assistants need a deep understanding of the capital, from K Street to Capitol Hill. They should have extensive experience in private industry, the labor sector, the conservative movement, and among the specific interest groups with which they will be asked to engage on behalf of the White House.

OPL staffers work with more external and internal parties than any other WHO staffers. In turn, they must be effective communicators and initiative-takers. They must also be able to influence, persuade, and—most important—listen to various stakeholders and ensure that they feel heard. All OPL staffers must understand from the outset that their jobs might be modified or even phased out entirely as the Administration's priorities change.

OFFICE OF INTERGOVERNMENTAL AFFAIRS (IGA)

The IGA connects the White House to state, county, local, and tribal governments. In other words, it is the one-stop shop for disseminating an Administration's agenda to all non–federal government entities.

The IGA should have a Director to whom one or two Deputy Directors report. The Director must ensure that the White House remains connected to all non–federal government entities. The interests and perspectives of these entities are represented in policy discussions, organized events with the West Wing, EOP senior staff, and IGA staff throughout the departments and agencies.

The IGA can be staffed in a variety of ways, but two arrangements are most common:

- Each deputy and that deputy's staffers are responsible for a type of government.
- A group of staffers is responsible for a specific geographical region of the country.

The IGA, as suggested above, represents the interests and perspectives of non–federal government entities, but its primary job is to make sure that these entities understand an Administration's agenda and ultimately support it.

The IGA must work with all other White House offices, especially the OPA and the OPL, and manage its staff throughout the departments and agencies. IGA staffers must therefore have communication skills, understand political nuance, and be willing to engage in complex policy discussions. They should also be not just generally responsive, but also proactive in seeking out the interests and perspectives of non–federal government entities.

WHITE HOUSE POLICY COUNCILS

As the federal government has ballooned in size over the past century, it has become increasingly difficult for the President alone to direct his agenda across the executive branch. Three White House policy councils have come into existence to help the President to control the bureaucracy and ensure continued alignment between agency leadership and White House priorities. Those councils—as previewed above—are the NSC, NEC, and DPC. Each is headed by an Assistant to the President and performs three significant functions.

- **Policy Coordination.** The primary role of the policy councils is to coordinate the development of Administration policy. This frequently includes developing significant legislative priorities, coordinating policy decisions that impact multiple departments and agencies, and at times coordinating policy decisions within a single department or agency. This process must ensure that all relevant offices are included; that competing or conflicting opinions are thoroughly discussed and evaluated; and, when there is disagreement among White House senior staff or among Cabinet members, a well-structured question is presented to the President for an intermediate or final decision.

- **Policy Advice.** By virtue of working in the White House, the heads of the three policy councils will also function as independent policy advisers to the President. This aspect of the role will vary depending on the individual in this position and the President's governing philosophy. Incumbents have ranged from "honest brokers," who mostly coordinate and ensure that all opinions are fairly presented to the President, to "policy deciders," who largely drive a given policy topic on behalf of the President.

- **Policy Implementation.** The policy councils also manage and mediate the implementation of previous policy decisions. Implementation of a new statute or an executive order frequently takes years and involves many

distinct and more granular policy decisions along the way. It is essential to have a centralized process for evaluating and coordinating these decisions, especially if they involve more than one Cabinet department or agency with differing opinions on the best approach for securing the President's goals.

The above functions have recently been managed by policy councils through a tiered interagency policy process. This process helps to identify differences of opinion and reach a decision without having to take every issue to the President. It can be used to address a single question or monitor a recurring issue on an ongoing basis. Typically, the process involves multiple Cabinet departments and agencies that have a pertinent role, policy interest, or disagreement. Each policy council's process could involve the following committees:

- **Policy Coordinating Committee (PCC).** A PCC is led by a Special Assistant to the President from the policy council and includes political Assistant Secretary–level experts from the relevant departments, agencies, or offices. The purpose is to determine where consensus exists, clearly identify where there are differing opinions, and develop options for resolving the remaining questions. If no outstanding questions or disagreements exist, the PCC may resolve the issue and move toward implementation at the agency level.

- **Deputies Committee (DC).** A DC is a meeting of presidentially appointed executives chaired by the policy council's Deputy Assistant to the President and relevant Deputy Secretaries. It evaluates the options produced by the PCC and frequently directs the PCC to add, expand, or reevaluate an option or even to reach a compromise and resolve an issue at that level.

- **Principals Committee (PC).** When questions are not resolved by a DC, the Director of the Policy Council will chair a PC, which is attended by the relevant Cabinet Secretaries and senior White House political staff. This is the final opportunity for the President's most senior advisers to discuss the question, make sure that each principal's position is carefully understood, and see whether consensus or a compromise might be reached. If not, the Chief of Staff's office will schedule time for the PC to meet with the President for a final decision.

Despite having seemingly clear and separate portfolios, the three policy councils frequently have areas of overlap, which can result in confusion, duplication, or conflict. For example, there are the areas of immigration and border security

(either NSC or DPC); health care, energy, and environment (either NEC or DPC); and trade and international economic policy (either NSC or NEC). Identifying these potentially problematic areas and assigning policy responsibilities to only one council where possible will help to speed up the policy-coordination process.

While other chapters will cover specific policy goals for each department or agency, incoming policy councils will need to move rapidly to lead policy processes around cross-cutting agency topics, including countering China, enforcing immigration laws, reversing regulatory policies in order to promote energy production, combating the Left's aggressive attacks on life and religious liberty, and confronting "wokeism" throughout the federal government.

National Security Council. The NSC is intended to be an interdepartmental body within the White House that can set national security policy with a whole-of-government approach. Unlike the other policy councils, the NSC was established by statute.[8] Statutory members and advisers who are currently part of the NSC include the President and Vice President; the Secretaries of State, Defense, and Energy; the Chairman of the Joint Chiefs of Staff; and the Director of National Intelligence.[9]

The NSC staff, and particularly the National Security Adviser, should be vetted for foreign and security policy experience and insight. The National Security Adviser and NSC staff advise the President on matters of foreign policy and national security, serve as an information conduit in times of crisis, and as liaisons ensuring that written communications are properly shared among NSC members.

Special attention should be given to the use of detailees to staff the NSC. In recent years, the NSC's staff size has been rightsized from its peak of 400 in 2015 down to 100–150 professional members. The next Administration should try to limit the number of detailees to ensure more direct presidential control.

National Economic Council. The NEC was established in 1993 by executive order and has four key functions:

- To "coordinate the economic policy-making process with respect to domestic and international economic issues."
- To "coordinate economic policy advice to the President."
- To "ensure that policy decisions and programs are consistent with the President's stated goals" and "that those goals are being effectively pursued."
- To "monitor implementation of the President's economic policy agenda."[10]

The NEC Director coordinates and implements the President's economic policy objectives by working with Cabinet secretaries, their departments, and multiple

agencies. The Director is supported by a staff of policy experts in various fields, including infrastructure, manufacturing, research and development, agriculture, small business, financial regulation, housing, technology and innovation, and fiscal policy.

The NEC considers economic policy matters, and the DPC typically considers anything related to domestic matters with the exception of economic policy matters. It also differs from the Council of Economic Advisers (CEA). Whereas the NEC is in charge of policy development, the CEA acts as the White House's internal research arm for economic analysis.

It is therefore critically important to find people with the right qualifications to head both the NEC and the CEA. The CEA is almost always led by a well-known academic economist, and the NEC is regularly led by someone with expertise in directing the President's economic policy process. Those who have served in the role have ranged from former CEOs of the nation's largest investment firms to financial-services industry managers to seasoned congressional staffers who have managed the economic policy issues for top financial and tax-writing committees.

Domestic Policy Council. The Domestic Policy Council (DPC) consists of advisers to the President on noneconomic domestic policy issues as well as international issues with a significant domestic component (such as immigration). It is one of the primary policy councils serving the President along with the NSC and NEC. The Director serves as the principal DPC adviser to the President, along with members of the Cabinet, and the Deputy Director chairs the committee responsible for coordinating domestic policy development at the Deputy Secretary level. In this respect, both the Director and the Deputy Director have critical institutional functions that affect the development of domestic policy throughout the Administration.

The DPC also has policy experts (for example, Special Assistants to the President or SAPs) who are responsible for developing and coordinating, as well as for advising the President, on specific issues. It is essential that DPC policy expertise reflect the most prominent issues that are before the Administration: issues such as the environment, health care, housing, and immigration. In addition, DPC SAPs should demonstrate a working knowledge of the rulemaking process (although they need not necessarily be experts on regulation) because a working knowledge of the rulemaking process will facilitate the DPC's effectiveness in coordinating Administration policy.

The DPC also needs to work closely with other offices within the Executive Office of the President to promote economic opportunity and private-sector innovation. This includes working with the Office of Management and Budget and its Office of Information and Regulatory Affairs as well as the Council of Economic Advisers, Council on Environmental Quality, and Office of Science and Technology

Policy. To this end, the Director should chair a standing meeting with the principals from each of the other EOP offices to enhance coordination from within the White House.

Several areas will be especially important as the DPC works to develop a well-defined domestic policy agenda. One is the promotion of innovation as a foundation for economic growth and opportunity. The President should establish an economic opportunity working group, chaired by the DPC Director, to coordinate the development of policies that promote economic opportunity. Another important area is the promotion of health care reform to bring down costs for the American people and the pressure that spending on health programs puts on the federal budget. Finally, DPC should coordinate with the NSC on a policy agenda to enhance border security.

OFFICE OF THE VICE PRESIDENT (OVP)

In modern U.S. history, the Vice President has acted as a significant adviser to the President. Once elected, the VP helps to promote and, in many instances, put into place and execute the President's agenda. The President may additionally determine the inclusion of OVP staff in White House meetings, including Policy Coordinating Committee, Deputies Committee, and Principals Committee discussions as has been done in various recent Administrations.

Recent Presidents have decided to give Vice Presidents space in the West Wing. The VP's proximity to the President—as well as to the Chief of Staff and additional senior advisers—makes his or her role a powerful one within the West Wing.

Presidents typically tap VPs to lead various Administration efforts. These efforts have included serving on the NSC Principals Committee, heading the National Space Council, addressing immigration and border issues, leading the response to health care crises, and supervising workforce programs. VPs traditionally also spearhead projects of personal interest that have been authorized by the President.

The VP is also charged with breaking tie votes in the Senate and in recent years has served abroad as a brand ambassador for the White House and more broadly the United States, announcing Administration priorities and coordinating with heads of state and other top foreign government officials. The Vice President, as President of the Senate, could be a President's emissary to the Senate.

OFFICE OF THE FIRST LADY/FIRST GENTLEMAN

The First Lady or First Gentleman plays an interesting role in the formation, implementation, and execution of policy in concert with the President. Active and interested first spouses often champion a select number of signature issues, whether they be thorny social issues or deeper policy issues. One advantage of the first spouse's taking on hot-button social issues is that any political backlash will be less severe than it would be for the President.

The first spouse normally appoints a chief of staff who has enough assistants to support the spouse's activities in the East Wing of the White House. This group works exclusively with the first spouse and senior members of the White House along with EOP personnel to implement and execute the first spouse's priorities, which reflect the first spouse's passions and interests and are often identified as important in discussions with the President. Executed well, they can be strategically useful in accelerating the Administration's agenda. Past East Wing initiatives have focused on such issues as combating bullying, fighting drug abuse, promoting literacy, and encouraging physical education for young adults and children.

The first spouse is afforded significant resources. His or her staff also works with the President's policy team, members of the Cabinet, and other EOP staff.

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but Edwin Meese III, Donald Devine, Ambassador Andrew Bremberg, and Jonathan Bronitsky deserve special mention. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

ENDNOTES

1. U.S. Constitution, art. II, § 1, https://constitution.congress.gov/constitution/article-2/ (accessed February 14, 2023).
2. U.S. Constitution, art. II, § 2.
3. U.S. Constitution, art. II, § 3.
4. U.S. Constitution, art. II, § 2.
5. See Chapter 2, "Executive Office of the President," *infra*.
6. H.R. 4328, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law No. 105-277, 105th Congress, October 21, 1998, Division C, Title I, § 151, https://www.congress.gov/105/plaws/publ277/PLAW-105publ277.pdf (accessed February 15, 2023).
7. S. 1871, An Act to Prevent Pernicious Political Activities, Public Law No. 76-252, 76th Congress, August 2, 1939, https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/53/STATUTE-53-Pg1147.pdf (accessed March 7, 2023).
8. S. 758, National Security Act of 1947, Public Law No. 80-253, 80th Congress, July 26, 1947, https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/61/STATUTE-61-Pg495.pdf (accessed February 15, 2023). "The National Security Council was established by the National Security Act of 1947 (PL 235 – 61 Stat. 496; U.S.C. 402), amended by the National Security Act Amendments of 1949 (63 Stat. 579; 50 U.S.C. 401 et seq.). Later in 1949, as part of the Reorganization Plan, the Council was placed in the Executive Office of the President." The White House, "National Security Council," https://www.whitehouse.gov/nsc/ (accessed February 15, 2023).
9. See Chapter 2, "Executive Office of the President," *infra*.
10. President William J. Clinton, Executive Order 12835, "Establishment of the National Economic Council," January 25, 1993, in *Federal Register*, Vol. 58, No. 16 (January 27, 1993), pp. 6189–6190, https://www.govinfo.gov/content/pkg/FR-1993-01-27/pdf/FR-1993-01-27.pdf (accessed March 7, 2023).

2

EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES

Russ Vought

In its opening words, Article II of the U.S. Constitution makes it abundantly clear that "[t]he executive power shall be vested in a President of the United States of America."[1] That enormous power is not vested in departments or agencies, in staff or administrative bodies, in nongovernmental organizations or other equities and interests close to the government. The *President* must set and enforce a plan for the executive branch. Sadly, however, a President today assumes office to find a sprawling federal bureaucracy that all too often is carrying out its own policy plans and preferences—or, worse yet, the policy plans and preferences of a radical, supposedly "woke" faction of the country.

The modern conservative President's task is to limit, control, and direct the executive branch on behalf of the American people. This challenge is created and exacerbated by factors like Congress's decades-long tendency to delegate its lawmaking power to agency bureaucracies, the pervasive notion of expert "independence" that protects so-called expert authorities from scrutiny, the presumed inability to hold career civil servants accountable for their performance, and the increasing reality that many agencies are not only too big and powerful, but also increasingly weaponized against the public and a President who is elected by the people and empowered by the Constitution to govern.

In *Federalist* No. 47, James Madison warned that "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."[2] Regrettably, that wise and cautionary note describes to a significant degree the modern executive branch, which—whether controlled

by the bureaucracy or by the President—writes federal policy, enforces that policy, and often adjudicates whether that policy was properly drafted and enforced. The overall situation is constitutionally dire, unsustainably expensive, and in urgent need of repair. Nothing less than the survival of self-governance in America is at stake.

The great challenge confronting a conservative President is the existential need for aggressive use of the vast powers of the executive branch to return power—including power currently held by the executive branch—to the American people. Success in meeting that challenge will require a rare combination of boldness and self-denial: boldness to bend or break the bureaucracy to the presidential will and self-denial to use the bureaucratic machine to send power away from Washington and back to America's families, faith communities, local governments, and states.

Fortunately, a President who is willing to lead will find in the Executive Office of the President (EOP) the levers necessary to reverse this trend and impose a sound direction for the nation on the federal bureaucracy. The effectiveness of those EOP levers depends on the fundamental premise that it is *the President's agenda* that should matter to the departments and agencies that operate under his constitutional authority and that, as a general matter, it is the President's chosen advisers who have the best sense of the President's aims and intentions, both with respect to the policies he intends to enact and with respect to the interests that must be secured to govern successfully on behalf of the American people. This chapter focuses on key features of and recommendations for several of the EOP's important components.

U.S. OFFICE OF MANAGEMENT AND BUDGET (OMB)

OMB assists the President in the execution of his policy agenda across the government by employing many statutory and executive procedural levers to bring the bureaucracy in line with all budgetary, regulatory, and management decisions. Properly understood, it is a President's air-traffic control system with the ability and charge to ensure that all policy initiatives are flying in sync and with the authority to let planes take off and, at times, ground planes that are flying off course. OMB's key roles include:

- **Developing and enforcing** the President's budget and executing the appropriations laws that fund the government;
- **Managing** agency and personnel performance, procurement policy, financial management, and information technology;
- **Developing** the President's regulatory agenda, reviewing new regulatory actions, reviewing federal information collections, and setting and enforcing federal information policy; and

- **Coordinating and clearing** agency communications with Congress, including testimonies and views on draft legislation.

OMB cannot perform its role on behalf of the President effectively if it is not intimately involved in all aspects of the White House policy process and lacks knowledge of what the agencies are doing. Internally to the EOP, ensuring that the policy-formulation procedures developed by the White House to serve the President include OMB is one of any OMB Director's major responsibilities. A common meme of those who intend to evade OMB review is to argue that where "resources" are not being discussed, OMB's participation is optional. This ignores both OMB's role in all downstream execution and the reality that it has the only statutory tools in the White House that are powerful enough to override implementing agencies' bureaucracies.

The Director must view his job as the best, most comprehensive approximation of the President's mind as it pertains to the policy agenda while always being ready with actual options to effect that agenda within existing legal authorities and resources. This role cannot be performed adequately if the Director acts instead as the ambassador of the institutional interests of OMB and the wider bureaucracy to the White House. Once its reputation as the keeper of "commander's intent" is established, then and only then does OMB have the ability to shape the most efficient way to pursue an objective.

Externally, the Director must ensure that OMB has sufficient visibility into the deep caverns of agency decision-making. One indispensable statutory tool to that end is to ensure that policy officials—the Program Associate Directors (PADs) managing the vast Resource Management Offices (RMOs)—personally sign what are known as the apportionments. In 1870, Congress passed the Anti-Deficiency Act[3] to prevent the common agency practice of spending down all appropriated funding, creating artificial funding shortfalls that Congress would have to fill. The law mandated that all funding be allotted or "apportioned" in installments. This process, whereby agencies come to OMB for allotments of appropriated funding, is essential to the effective financial stewardship of taxpayer dollars. OMB can then direct on behalf of a President the amount, duration, and purpose of any apportioned funding to ensure against waste, fraud, and abuse *and* ensure consistency with the President's agenda and applicable laws.

The vast majority of these apportionments were signed by career officials—the Deputy Associate Directors (DADs)—until the Trump Administration placed this responsibility in the hands of the PADs and thereby opened wide vistas of oversight that had escaped the attention of policy officials. The Biden Administration subsequently reversed this decision. No Director should be chosen who is unwilling to restore apportionment decision-making to the PADs' personal review, who is not aggressive in wielding the tool on behalf of the President's agenda, or who is unable to defend the power against attacks from Congress.

It should be noted that each of OMB's primary functions, along with other executive and statutory roles, is carried out with the help of many essential OMB support offices. The two most important offices for moving OMB at the will of a Director are the Budget Review Division (BRD) and the Office of General Counsel (OGC). The Director should have a direct and effective relationship with the head of the BRD (considered the top career official within OMB) and transmit most instructions through that office because the rest of the agency is institutionally inclined toward its direction and responds accordingly. The BRD inevitably will translate the directions from policy officials to the career staff, and at every stage, it is obviously vital that the Director ensure that this translation is an accurate one.

In addition, many key considerations involved in enacting a President's agenda hinge on existing legal authorities. The Director must ensure the appointment of a General Counsel who is respected yet creative and fearless in his or her ability to challenge legal precedents that serve to protect the status quo. This is vital within OMB not only with respect to the adequate development of policy options for the President's review, but also with respect to agencies that attempt to protect their own institutional interests and foreclose certain avenues based on the mere assertion (and not proof) that the law disallows it or that, conversely, attempt to disregard the clear statutory commands of Congress.

In general, the Director should empower a strong Deputy Director with authority over the Deputy for Management, the PADs, and the Office of Information and Regulatory Affairs (OIRA) to work diligently to break down barriers within OMB and not allow turf disputes or a lack of visibility to undermine the agency's principal budget, management, and regulatory functions. OMB should work toward a "One OMB" position on behalf of the President and represent that view during the various policymaking processes.

Budget. The United States today faces an untenable fiscal situation and owes $31 trillion on a debt that is steadily increasing. The OMB Director should present a fiscal goal to the President early in the budget development process to address the federal government's fiscal irresponsibility. This goal would help to align the months-long process of developing the actual proposals for inclusion in the budget.

Though some mistakenly regard it as a mere paper-pushing exercise, the President's budget is in fact a powerful mechanism for setting and enforcing public policy at federal agencies. The budget team includes six Resource Management Offices that, together with the BRD and other components, help the Director of OMB to develop and execute detailed agency spending plans that bear on *every* major aspect of policy formation and execution at federal agencies. Through initial priority-setting and ongoing supervision of agency spending, OMB's budget team plays a key role in executing policy across the executive branch, including at many agencies wrongly regarded as "independent."

The RMOs, each of which is led by a political appointee known as the PAD and a career DAD, are separated into six functional units:

- National Security.
- Natural Resources, Energy, and Science.
- Health.
- Education, Income Maintenance, and Labor.
- Transportation, Justice, and Homeland Security.
- Treasury, Commerce, and Housing.

Because the RMOs are institutionally ingrained in nearly all policymaking and implementation across the executive branch, they play a critical role in helping the Director to implement the President's public policy agenda. However, because each RMO is responsible for formulating and supervising such a wide range of policy details, many granular but critical policy decisions are effectively left to the career professionals who serve across Administrations.

To enhance the OMB Director's ability to help the President drive policy at the agencies, the existing six RMOs should be divided into smaller subject-matter areas, allowing for more PADs, and each of these PADs should have a Deputy PAD. This expanded pool of RMOs with additional political leadership would enable more comprehensive direction and oversight of policy development and implementation.

Regardless of whether Congress adopts the President's full set of budget recommendations, the President should reintroduce the concept of administrative pay-as-you-go, or administrative PAYGO. This simple procedural requirement imposes budget neutrality on the discretionary choices of federal agencies, of which there are many in nearly all areas of policymaking. This simple step forces the executive branch to control what it can control. The principle may occasionally yield to other overarching requirements, such as a presidential regulatory budget, but in nearly all cases, administrative PAYGO plays a unique and indispensable role in enforcing fiscal responsibility at federal departments and agencies.

The President should use every possible tool to propose and impose fiscal discipline on the federal government. Anything short of that would constitute abject failure.

Management. The Management Office of OMB (the "M-Side" as it is often called) is responsible for carrying out several important agency oversight functions, many of which are statutory. The Management team includes the following offices led by presidentially appointed Senate-confirmed individuals:

- The Office of Federal Procurement Policy (OFPP).
- The Office of Performance and Personnel Management (OPPM).
- The Office of Federal Financial Management (OFFM).
- The Office of the Federal Chief Information Officer (OFCIO).
- The Made in America Office (MIAO), which was added by the Biden Administration and is not a Senate-confirmed slot.

Each of these offices has responsibilities and authorities that a President can use to help drive policy across the government. It is vital that the Director and his political staff, not the careerists, drive these offices in pursuit of the President's actual priorities and not let them set their own agenda based on the wishes of the sprawling "good government" management community in and outside of government. Many Directors do not properly prioritize the management portfolio, leaving it to the Deputy for Management, but such neglect creates purposeless bureaucracy that impedes a President's agenda—an "M Train to Nowhere."

OFPP. This office plays a critical role in leading the development of new policies and regulations concerning federal contracting and procurement. Through the Federal Acquisition Regulatory Council, which is generally chaired by the OFPP Administrator, OFPP helps the Director to set a wide range of policies for all of those who contract with the executive branch. In the past, those governmentwide contracting rules have played a key role in helping to implement the President's policy agenda. This office should be engaged early and often in OMB's effort to drive policy, including by obtaining transparency about entities that are awarded federal contracts and grants and by using government contracts to push back against woke policies in corporate America.

OPPM. Through this office, the Director helps federal agencies to establish their performance goals and performance review processes. OPPM also works with the U.S. Office of Personnel Management (OPM) to establish and manage personnel policies and practices across the federal government. The Director should instruct OPPM to establish annual performance goals and review processes for agencies that reflect the President's agenda. OPPM should also be part of the President's strategy to set and enforce sensible policies and practices for the federal workforce.

OFFM. This office helps the Director to root out waste, fraud, and abuse in federal programs—for example, through the Do Not Pay program. It should be part of efforts to save precious taxpayer resources.

OFCIO. This office guides the federal government's use and adoption of Internet-based technologies to improve government operations and save taxpayer

money. As a function of its leadership role, it is critical in interagency discussions on a wide range of technology issues. The office thus is an important part of the President's efforts to modernize, strengthen, and set technology-adoption policy for the executive branch.

MIAO. Building on the example and work of the Trump Administration, President Biden established this office to centralize, carry out, and further develop the federal government's Buy-American and other Made-in-America commitments. Its work ought to be continued and further strengthened.

Regulatory and Information Policy. OMB's OIRA plays an enormous and vital role in reining in the regulatory state and ensuring that regulations achieve important benefits while imposing minimal burdens on Americans. The President should maintain Executive Order (EO) 12866,[4] the foundation of OIRA's review of regulatory actions. The Administration should likewise maintain the recent extension of those standards to regulatory actions of the U.S. Department of the Treasury.[5] Regulatory analysis and OIRA review should also be required of the historically "independent" agencies as the Office of Legal Counsel has found is legally permissible.[6]

If the current Administration proceeds with its declared intent to modify aspects of EO 12866 or review OMB Circular A-4,[7] the related document that provides the foundation for cost-benefit analysis, the next President should immediately begin to undo those changes and develop a rigorous, data-driven approach that will result in the least burdensome rules possible. The next President should also revive the directive in Executive Order 13891[8] that significant guidance documents also must pass through OIRA review.

Because OIRA review often leads to fewer regulatory burdens, more regulatory benefits, and better coordination of regulatory policy, funding for OIRA tends to pay large dividends. Yet over the years, funding for OIRA has diminished. This trend should be reversed. The budget should also include sufficient full-time equivalent (FTE) employees to form regulatory advance teams that would consult with agencies on cost-benefit analysis and good regulatory practices at the beginning of the rulemaking process for the most important regulations. These teams would help agencies take cost-benefit analysis into account from the beginning of their rulemaking efforts, which in turn would result in higher-quality regulations and a swifter eventual OIRA review. To preserve the integrity of OIRA review, the staff who consult at the beginning of a rulemaking should not handle its eventual review.

The next President should also reinstate the many executive orders signed by President Trump that were designed to make the regulatory process more just, efficient, and transparent. Executive Orders 13771,[9] 13777,[10] 13891,[11] 13892,[12] 13893,[13] 13924 Section 6,[14] 13979,[15] and 13980[16] should be revived (with modifications as needed). Executive Order 13132[17] on federalism should be strengthened so that state regulatory and fiscal operations are not commandeered by the federal

government through so-called cooperative federalism programs. Additionally, the President should revise and sign an updated version of President Ronald Reagan's Executive Order 12630[18] on federal takings.

The next President should strengthen implementation of the Information Quality Act,[19] robustly use the authority of the Paperwork Reduction Act,[20] carefully enforce the Privacy Act,[21] and ensure the sound execution of OIRA's statistical and other information policy functions. Regulatory cooperation agreements can also promote the further adoption of good regulatory practices, which improve market conditions for America and her allies. OIRA should also work with other components of OMB to revise and apply OMB's uniform Guidance for Grants and Agreements[22] and ensure that federal contract and grant guidelines satisfy EO 12866 and other centralized standards as appropriate.

But executive reforms and actions, while vital, are not enough: Congress also must act. The next President should work with Congress to pass significant regulatory policy and process reforms, which could go a long way toward reining in the administrative state. Excellent examples of such legislation include the Regulatory Accountability Act,[23] SMART Act,[24] GOOD Act,[25] Early Participation in Regulations Act,[26] Unfunded Mandates Accountability and Transparency Act,[27] and REINS Act.[28]

Finally, the next President should work with Congress to maximize the utility of the Congressional Review Act (CRA),[29] which allows Congress to undo midnight regulatory actions (including those disguised as "guidance") on an accelerated timeline. To leverage the CRA's power to the maximum extent, Congress and the President should enact the Midnight Rules Relief Act,[30] which would help to ensure that multiple regulatory actions could be packaged and voted on at the same time. Immediate and robust use of the CRA would allow the President to focus his rulemaking resources on major new regulatory reforms rather than devoting months or years to undoing the final rulemakings of the Biden Administration.

Legislative Clearance and Coordination. OMB plays a critical role in ensuring that the executive branch is aligned on legislative proposals and language, agency testimonies, and other communications with Congress. The Director should use these authorities to enforce policy and message consistency aggressively and promote the effective engagement of the executive branch in legislative processes.

NATIONAL SECURITY COUNCIL (NSC)

The National Security Council (NSC) was established by statute to support the President in developing and implementing national security policy by coordinating across relevant departments and agencies, integrating authorities and resources toward common ends, and objectively assessing progress toward established goals. Led by the National Security Advisor (NSA), the NSC staff will be successful in implementing the President's national security goals only if it is made up

of personnel with technical expertise and experience as well as an alignment to the President's declared national security policy priorities. The NSC must then chart a course that articulates and achieves the President's national security goals and objectives. The President should empower a strong NSC that not only has the power to convene the policy process, but also is entrusted with the full power of the presidency to drive the bureaucracy.

In organizing (by means of Presidential Directive[31]) an NSC staff that is more responsive and aligned with the President's goals and empowered to implement them, the NSA should immediately evaluate and eliminate directorates that are not aligned with the President's agenda and replace them with new directorates as appropriate that can drive implementation of the President's signature national security priorities. In addition to realigning the staff organization to the President's priorities, the NSA should assign responsibility for implementation of specific policy initiatives to senior NSC officials from across the NSC staff structure. These officials should develop, direct, and execute tangible action plans in coordination with multiple agencies to achieve measurable, time-defined milestones.

Aligning NSC staff to the President's national security goals will provide clearer direction, a mandate for action, and a baseline of accountability that can be used to evaluate staff performance and the NSC's overall progress. Accountable senior officials, themselves either political appointees or a minimum number of career detailees, who are selected and vetted politically and report directly to political staff should be the main day-to-day managers for interagency coordination and implementation of their assigned national security policy objectives. They should provide policy analysis for consideration by the broader NSC and relevant agencies and ensure timely responses to decisions made by the President. The accountable senior officials should be established at the direction of the NSA and draw on personnel and expertise from beyond the NSC, including OMB, the National Economic Council, and relevant federal agencies.

The NSC staff and principals should work in tandem with the National Economic Council and OMB at all levels, presenting a united effort to achieve the President's goals and drawing on the latter's statutory authorities to guide the bureaucracy. To accomplish national objectives effectively, foreign policy should fully incorporate the economic instruments of national power. National security policy must also include the prioritized allocation of resources. When policies are divorced from the resources required to implement them, they are stillborn—academic exercises that undermine our national security and leave departments and agencies to their own devices.

The accountable senior officials should be empowered to identify, recruit, clear, and hire staff who are aligned with and willing to shepherd the President's national security priorities. NSC staff leads, under the direction of the NSA, should have the discretion to reduce the number of positions that need high-level clearances,

and the NSC should be adequately resourced and authorized to adjudicate and hold security clearances internally with investigators who work directly for the NSC and whose sole task is to clear NSC officials. If certain staff are determined not to need high-level clearances, the question becomes whether they should be part of the NSC at all.

The NSC should take a leading role in directing the drafting and thorough review of all formal strategies: the National Security Strategy, the National Defense Strategy, the Nuclear Posture Review, the Missile Defense Strategy, etc. In particular, the National Defense Strategy, which by tradition has evaded significant review, should be prioritized for White House review by the NSC and OMB. Both should also conduct reviews of operational war plans and global force planning and allocations with the Secretary of Defense to align them with presidential priorities and review all key policy and guidance intended for implementation by the heads of the Department of Defense, the Department of State, and the Intelligence Community before they are authorized for distribution. The NSC should rigorously review all general and flag officer promotions to prioritize the core roles and responsibilities of the military over social engineering and non-defense matters, including climate change, critical race theory, manufactured extremism, and other polarizing policies that weaken our armed forces and discourage our nation's finest men and women from enlisting to serve in defense of our liberty.

The NSC staff will need to consolidate the functions of both the NSC and the Homeland Security Council (HSC), incorporate the recently established Office of the National Cyber Director, and evaluate the required regional and functional directorates. Given the aforementioned prerequisites, the NSC should be properly resourced with sufficient policy professionals, and the NSA should prioritize staffing the vast majority of NSC directorates with aligned political appointees and trusted career officials. For instance, the NSA should return *all* nonessential detailees to their home agencies on their first day in office so that the new Administration can proceed efficiently without the personnel land mines left by the previous stewards and as soon as possible should replace all essential detailees with staff aligned to the new President's priorities. The HSC has overseen pandemic response, and its incorporation is important.

In the end, change requires intervention, and the NSC staff should be appropriately recruited, manned, and empowered to achieve the President's national security and foreign policy objectives and maintain robust policy analysis and discussion while minimizing resistance from those who have an agenda or who jealously guard their resources and autonomy at the expense of national security and sound policy development. This resistance and inertia can be inadvertently enabled by a small and unempowered NSC.

Additionally, the White House Chief of Staff and NSA must ensure that the NSC is functioning in tandem with the rest of the White House staff to benefit from

the best strategic thinking of the President's top advisers. History shows that an unsupervised NSC staff can stray from its statutory role and adversely affect a President and his policies. Moreover, while the NSC should be fully incorporated into the White House, it should also be allowed to do its job without the impediment of dually hatted staff that report to other offices. For instance, the NSC needs its own counsel to inform what legal options can be provided to the President. The White House Counsel should be part of that policy process as the President's top legal adviser. These recommendations provide a clear road map for rapidly sizing and solidifying the NSC staff to support and achieve the President's objectives beginning on Inauguration Day.

NATIONAL ECONOMIC COUNCIL (NEC)

The National Economic Council is one of the policy councils serving the President along with the NSC and the Domestic Policy Council (DPC). The Director serves as principal adviser to the President on domestic and international economic policy and communicates the President's economic message to the media. The Deputy Director is responsible for the day-to-day operation of the council, which includes chairing the committee that coordinates economic policy development at the Deputy Secretary level. In effect, the Director and Deputy Director are the officials who are primarily responsible for the development of economic policymaking for the Administration. Once a policy is adopted, it is the appropriate agency's responsibility to implement it. The NEC's policy process is also used to determine whether the President should support or oppose legislation passed by Congress.

In addition to its leadership, the NEC has policy experts (for example, Special Assistants to the President or SAPs) who are responsible for developing and coordinating, as well as advising the President, on specific issues. It is essential that the policy expertise of the NEC reflect the current environment's most pressing issues. Today, this would include (among other topics) taxes, energy and environment, technology, infrastructure, health care, financial services, workforce, agriculture, antitrust and competition policy, and retirement programs. NEC's SAPs should have a working knowledge of how the Administration can implement policy through the rulemaking process, although it is not necessary that they be experts on regulation themselves, particularly given OMB's role. This will facilitate the NEC's effectiveness in coordinating Administration policy.

The NEC needs to work closely with other offices within the Executive Office of the President to promote innovation by the private sector and create an environment that will stimulate economic activity while reducing federal spending and debt. This includes working with the DPC, NSC, OMB, Council of Economic Advisers, Office of Intergovernmental Affairs, Office of Cabinet Affairs, White House Counsel, Council on Environmental Quality, Office of Legislative Affairs,

and Office of Science and Technology Policy. To this end, the NEC Director should chair a standing meeting with the principals from each of the other EOP offices to enhance coordination from within the White House.

In the past, there has been tension among the DPC, NEC, and NSC over jurisdiction. It is important to set clear jurisdictions at the start of an Administration to prevent needless and counterproductive turf fights. In addition, the Principal Deputy for international economic policy is jointly appointed at NEC and NSC and could end up serving two different interests. To avoid such problems, international economic policy should be entirely coordinated from NEC.

It will be especially important for the NEC to work seamlessly with the Council of Economic Advisers (CEA), which provides the President and the White House offices with the latest economic data and forecasts, as well as estimates of the economic impact of proposed policies, and prepares the annual *Economic Report of the President*. The CEA is not a policy council and therefore does not run policy processes, which is the responsibility of the NEC, DPC, and NSC. However, the CEA does play a key role in ensuring that any policy considered by the councils is rigorously evaluated for its economic impacts.

The NEC works closely with the White House Office of Communications and Office of Speechwriting to ensure that the White House's messaging and media engagement communicate the President's economic policy effectively.

The NEC also plays a key role in advancing the President's economic agenda by advising the Office of Presidential Personnel on appointments to key economic posts, including positions in financial regulatory agencies. The NEC helps to ensure that each economic post is held by a person who shares the President's policy priorities and works well with the rest of the Administration's economic team. The financial regulators are run partly by civil servants (some of whom were political appointees in prior liberal Administrations) who often resist a conservative Administration's policies. It is therefore critical that an Administration not only appoints capable individuals to lead these agencies, but also has personnel who can be hired into senior staff positions within the agencies.

A few areas will be especially important if the NEC is to develop a well-defined economic policy agenda. One is the promotion of innovation as a foundation for economic growth and opportunity. Another is the creation of an environment that fosters economic growth through tax reform and the elimination of regulatory and procedural barriers.

OFFICE OF THE U.S. TRADE REPRESENTATIVE (USTR)

The Office of the U.S. Trade Representative provides the President with the internal White House resources necessary to formulate and execute a unified, whole-of-government approach to trade policy. The President should ensure that the USTR is empowered to serve in that leadership role, much as other

EOP components organize and drive a coordinated policy agenda on behalf of the President.

The People's Republic of China's predatory trade practices have disrupted the open-market trading system that has provided mutual benefit to all participating countries—including China—for decades. The failure of the World Trade Organization (WTO) to discipline China for abrogation of its trading commitments has seriously undermined its credibility and made it a largely ineffective institution. The United States, through an empowered USTR, must act to rebalance and refocus international trading relationships in favor of democratic nations that embrace free, fair, and open trade principles built on market-driven economies.

Chapter 26 of this book outlines recommended trade policy priorities for the incoming President. However, regardless of the approach, successful implementation of that trade agenda will require the President to articulate a clear policy direction and instructions for the executive branch to operate in a coordinated fashion under the leadership of an empowered USTR.

To address these and other challenges, protect the American worker, and secure free and open markets for our communities and businesses, the next President must leverage the institutional resources and strength of the USTR and neither allow institutional interests to drive a fragmented trade policy that is developed from the ground up nor cater to parochial interests across government and Washington's broader industry of influence.

The USTR's mission is vitally important in reorienting the global trading system in a direction that is open, fair, and prosperous. In order to achieve the President's policy goals, a strong USTR must be empowered to set trade policy from the White House with the authority and resources to represent the interests of the President's trade agenda with adequate budget, staff, analysis, and expertise to engage meaningfully in internal and interagency policy deliberations. The USTR should organize and harness existing interagency trade committees to serve the President's trade agenda and drive a consensus among federal stakeholders, dispose of legacy advisory committees with members who serve special interests, direct action to implement policy priorities, measure progress toward implementing the President's agenda, and hold agencies and officials accountable for delivering the President's agenda. The USTR's leadership should not only coordinate and enforce the President's agenda across the federal community, but also set and enforce the President's trade agenda internally.

Trade policy and priorities should be set by the President and implemented by the U.S. Trade Representative in cooperation with the other economic and national security officials, not by the range of governmental and nongovernmental interests that attempt to force their policy preferences on the USTR. A strong USTR empowered with the necessary resources, authorities, and interagency cooperation will protect U.S. interests in the global marketplace more effectively.

COUNCIL OF ECONOMIC ADVISERS (CEA)

Congress established the Council of Economic Advisers in 1946 to advise the President on economic policy based on data, research, and evidence. The CEA is one of the oldest congressionally created offices within the White House complex and plays a broad role in bringing economic expertise to Administration policy across a large range of policy areas. The CEA has one presidentially appointed and Senate-confirmed chair, two presidentially appointed members who assist and often have expertise that complements the chair, and approximately 40 staff employees.

Statutorily, the CEA is charged with being the President's principal source of economic advice. However, this role has diminished over time as its policy appraisal and especially formulation and recommendation functions have been taken over or diluted by other economic policy bodies within the White House. By law, the CEA is required to publish an annual *Economic Report of the President* within 10 days after submission of the budget. This report is not just a messaging document; it is an opportunity to provide greater rigor in support of policy areas that the White House is prioritizing and to build up the external credibility of those ideas.

A future conservative Administration should utilize the CEA as the senior internal White House economists much as the White House Counsel's office functions as the senior internal White House lawyers. This does not mean that there are no economists in other offices. There are, just as there often are lawyers in the policy councils and other White House offices, but the CEA's role, like the White House Counsel's, is to employ its unique expertise (particularly on the technical side) to ensure that sound analysis is contributing to and shaping the policy discussion.

In practice, this means that CEA staff do not "coordinate" the policy process in the way that the DPC or NEC would, but they should be integral to the EOP's policy development processes. CEA staff should support sound policy development and execution by actively contributing to running policy dialogues, proactively raising issues that need to be addressed, consulting on questions that arise, and guiding EOP and agency officials on the analytical foundations of policy. Structurally, the White House Chief of Staff should ensure that the CEA has a seat at the policymaking table on all relevant policy.

Senior economists traditionally have not gone through the Office of Presidential Personnel process and more often than not are hired on an academic-year cycle. As a result, senior economists hired in the summer of a presidential election year tend to remain on staff until the next summer even if a President from the opposite party takes power and installs a new slate of CEA political appointees for chair, members, etc. Although these hiring practices create some continuity, the presence of senior economists who were never fully vetted for their alignment with White House policy objectives or who were holdovers from a recently departed Administration can breed skepticism and distrust of the CEA by other units within the White

House, creating the risk that the CEA's role in the policymaking process will be diminished. A future Administration should consider hiring that reflects the White House calendar (mid-January) and involves the Office of Presidential Personnel.

NATIONAL SPACE COUNCIL (NSPC)

The National Space Council is responsible for providing advice and recommendations to the President on the formulation and implementation of space policy and strategy. It is charged with conducting a whole-of-government approach to the nation's space interests: civil, military, intelligence, commercial, or diplomatic. Historically, it has been chaired by the Vice President at the President's direction, and its members consist of members of the Cabinet and other senior executive branch officials as specified by the President in Executive Order 13803.[32] The NSpC's purpose is to ensure that the President's priorities relative to space are carried out and, as necessary, to resolve policy conflicts among departments and agencies that are related to space.

Space projects and programs are risky, complex, expensive, and time consuming—although commercial space innovations are lowering costs and accelerating schedules. Nevertheless, while fiscal discipline should not be ignored, long-term policy stability is crucial to investors, innovators, industry, and agencies. Policy stability is easier when policies and programs are aligned with long-term national interests as opposed to those of particular advocacy groups or political factions. The Trump Administration's major space policies—including the U.S. Space Force, the Artemis program to land the next Americans on the moon, and support for a strong commercial space sector—have endured under the Biden Administration.

Major challenges remain in implementation and regulatory reform to keep up with rapidly evolving space markets and competitors. These include the long-term sustainability of space activities in light of increasing orbital debris; creation of space situational awareness services for civil and commercial uses; management of mega-constellations; licensing of new commercial remote sensing capabilities; keeping up with licensing demands due to high launch rates; transitioning International Space Station operations to multiple, privately owned space platforms; and (most important) accelerating the acquisition and fielding of national security space capabilities in response to an increasingly aggressive China.

The Vice President should have a clear understanding with the National Security Advisor and the White House Counsel that they and their respective staffs will work within the White House to determine the scope and leadership of policy reviews that can overlap multiple areas of responsibility. A similar understanding is necessary with the heads of other policy councils such as the NEC, DPC, and National Science and Technology Council (NSTC).

As a result of the President's direction and the Vice President's leadership, the NSpC under the Trump Administration was able to coordinate a wide range of

space policy reviews, legislative proposals, and regulatory reforms smoothly. The NSpC generally led on space issues within the EOP, but other White House offices also took on space topics.

- As a member of the NSpC, and in coordination with other members, the Office of Science and Technology Policy developed a national space weather strategy, research and development (R&D) plans to mitigate the effects of orbital debris, and protocols for planetary protection to avoid biological contamination of celestial bodies.
- The Council of Economic Advisers did research on the economic benefits of space property rights.
- OMB's Office of Information and Regulatory Reform updated and streamlined commercial launch licensing and commercial remote sensing satellite rules.

During the Trump Administration, if a topic was purely military, such as standing up the U.S. Space Command, the NSC took the lead. If a topic cut across military, civil, and commercial sectors, as was the case with cybersecurity in space, the NSpC and NSC would cochair the policy review groups.

Trusted, collegial relationships across the White House complex are critical to successful space policy development, implementation, and oversight. Nowhere is this more important than in the relationship between the NSpC staff and OMB staff who oversee civil and national security–related space spending. Teamwork between the NSpC and OMB staff can communicate clear presidential priorities to departments and agencies, facilitating smooth development of the President's budget request. The NSpC and OMB have many opportunities to collaborate in promoting presidential priorities while finding offsets in lower-priority programs and funding lines.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY (OSTP)

The White House Office of Science and Technology Policy (OSTP) was created by the National Science and Technology Policy, Organization, and Priorities Act of 1976.[33] Before its creation, Presidents received their advice and counsel on such matters through advisers and boards that had no statutory authority. The Director of OSTP is one of the few Senate-confirmed positions within the Executive Office of the President. Consistent with other laws, the President may delegate to the Director of OSTP directive authority over other elements of the executive branch. Other EOP policy officials and organizations such as the NSC and NEC are formally only advisory with relevant agency directives issued by the President.

The OSTP's functions, as contained in the law, are to advise the President of scientific and technological considerations, evaluate the effectiveness of the federal effort, and generally lead and coordinate the federal government's R&D programs. If science is being manipulated at the agencies to support separate political and institutional agendas, the President should increase the prominence of the OSTP's Director either formally or informally. This would elevate the role of science in policy discussions and subsequent outcomes and theoretically help to balance out agencies like the Departments of Energy, State, and Commerce and the Environmental Protection Agency and Council on Environmental Quality. The OSTP can also help to bring technical expertise to regulatory matters in support of OMB.

The OSTP should continue to play a lead role in coordinating federal R&D programs. Recent legislation, especially the CHIPS and Science Act,[34] has expanded federal policy and funding across the enterprise, and there is a need for more significant leadership in this area both to ensure effectiveness and to avoid duplication of effort. As befitting its location in the White House, the OSTP must be concerned with advancing national interests and not merely the parochial concerns of departments, agencies, or parts of the scientific community.

During the Trump and Biden Administrations, there has been a bipartisan focus on prioritizing R&D funding around the so-called Industries of the Future (IOTF). Under President Trump, IOTF priorities were artificial intelligence (AI), quantum information science (QIS), advanced communications/5G, advanced manufacturing, and biotechnology. Under President Biden, this list has been expanded to include advanced materials, robotics, battery technology, cybersecurity, green products and clean technology, plant genetics and agricultural technologies, nanotechnology, and semiconductor and microelectronics technologies. These priorities should be evaluated and narrowed to ensure consistency with the next Administration's priorities.

Given a long list of priorities, coordinating efforts across agencies and measuring success are extremely challenging. The OSTP and OMB are required to work together on an annual basis to prioritize the funding requests and whatever Congress adds on top of them, but there continues to be concern about mission creep and funds expended on nonscientific R&D.

The President should also issue an executive order to reshape the U.S. Global Change Research Program (USGCRP) and related climate change research programs. The USGCRP produces strategic plans and research (for example, the National Climate Assessment) that reduce the scope of legally proper options in presidential decision-making and in agency rulemakings and adjudications. Also, since much environmental policymaking must run the gauntlet of judicial review, USGCRP actions can frustrate successful litigation defense in ways that the career bureaucracy should not be permitted to control. The process for producing assessments should include diverse viewpoints. The OSTP and OMB should jointly assess the independence of the contractors used to conduct much of this outsourced

government research that serves as the basis for policymaking. The next President should critically analyze and, if required, refuse to accept any USGCRP assessment prepared under the Biden Administration.

The President should also restore related EOP research components to their purely informational and advisory roles. Consistent with the Global Change Research Act of 1990,[35] USGCRP-related EOP components should be confined to a more limited advisory role. These components should include but not necessarily be limited to the OSTP; the NSTC's Committee on Environment; the USGCRP's Interagency Groups (for example, the Carbon Cycle Interagency Working Group); and the Federal Coordinating Council for Science, Engineering, and Technology. As a general matter, the new Administration should separate the scientific risk assessment function from the risk management function, which is the exclusive domain of elected policymakers and the public.

Finally, the next Administration will face a significant challenge in unwinding policies and procedures that are used to advance radical gender, racial, and equity initiatives under the banner of science. Similarly, the Biden Administration's climate fanaticism will need a whole-of-government unwinding. As with other federal departments and agencies, the Biden Administration's leveraging of the federal government's resources to further the woke agenda should be reversed and scrubbed from all policy manuals, guidance documents, and agendas, and scientific excellence and innovation should be restored as the OSTP's top priority.

COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)

The Council on Environmental Quality is the EOP component with the principal task of administering the National Environmental Policy Act (NEPA)[36] by issuing regulations and interpretive documents and by overseeing the processes of individual permitting agencies' own NEPA regulations, including categorical exclusions. The CEQ also coordinates environmental policy across the federal government, and its influence has waxed and waned across Administrations.

The President should instruct the CEQ to rewrite its regulations implementing NEPA along the lines of the historic 2020 effort and restoring its key provisions such as banning the use of cumulative impact analysis. This effort should incorporate new learning and more aggressive reform options that were not included in the 2020 reform package with the overall goal of streamlining the process to build on the Supreme Court ruling that "CEQ's interpretation of NEPA is entitled to substantial deference."[37] It should frame the new regulations to limit the scope for judicial review of agency NEPA analysis and judicial remedies, as well as to vindicate the strong public interest in effective and timely agency action.

The Federal Permitting Improvement Steering Council (FPISC), of which the CEQ is a part, has been empowered by Congress through significant new funding and amendments to FAST-41.[38] The President should build on this foundation to

further empower the FPISC by making its Executive Director an EOP appointee with delegated presidential directive authority over executive branch permitting agencies. For instance, the implementation of Executive Order 13807's One Federal Decision[39] revealed many ways that the systems established by EO 13807 can be improved. The new President should seek to issue a new executive order to create a unified process for major infrastructure projects that includes giving project proponents more control of any regulatory clocks.

The President should issue an executive order establishing a Senior Advisor to coordinate the policy development and implementation of relevant energy and environment policy by officials across the EOP (for example, the policy staff of the NSC, NEC, DPC, CEQ, and OSTP) and abolishing the existing Office of Domestic Climate Policy. The Senior Advisor would report directly to the Chief of Staff. The role would be similar to the role that Brian Deese and John Podesta had in the Obama White House. This energy/environment coordinator would help to lead the fight for sound energy and environment policies both domestically and internationally.

The President should eliminate the Interagency Working Group on the Social Cost of Carbon (SCC), which is cochaired by the OSTP, OMB, and CEA, and by executive order should end the use of SCC analysis.

Finally, the President should work with Congress to establish a sweeping modernization of the entire permitting system across all departments and agencies that is aimed at reducing litigation risk and giving agencies the authority to establish programmatic, general, and provisional permits.

OFFICE OF NATIONAL DRUG CONTROL POLICY (ONDCP)

Congress created the Office of National Drug Control Policy (ONDCP) through the Anti-Drug Abuse Act of 1988[40] to serve as a coordinative auxiliary for the President on all matters related to drug policy. The next President's top drug policy priority must be to address the current fentanyl crisis and reduce the number of overdoses and fatalities. This crisis resulted in the deaths of more than 100,000 Americans in 2021.

The next Administration must reaffirm a commitment to preventing drug use before it starts, providing treatment that leads to long-term recovery, and reducing the availability of illicit drugs in the United States. The drug trafficking environment is exponentially more dynamic and dangerous today than it was just five years ago as powerful synthetic opioids (fentanyl and its analogues) are mixed into other drugs of abuse. Drug trafficking organizations are extremely nimble and able to adapt quickly to federal government actions and changes in user behavior. Disrupting the flow of drugs across our borders and into our communities is of paramount importance, both to save lives and to bolster our public health efforts. For these reasons, the Director of ONDCP should make it a point to consult with federal border enforcement officials.

The National Drug Control Program agencies represented a total of $41 billion in fiscal year 2022. Whereas the position for overseeing budget activities is traditionally held by a career official, it is imperative that a political appointee lead the ONDCP budget office to ensure coordination between the OMB Program Associate Director and the ONDCP budgetary appointee.

ONDCP grant-making activities have been controversial over the years, particularly within conservative Administrations concerned that the White House lacks the expertise to oversee such programs directly. The ONDCP administers two grant programs: the Drug-Free Communities Support Program and the High Intensity Drug Trafficking Areas Program. While it makes sense to transfer these programs eventually to the Department of Justice and Department of Health and Human Services, respectively, it is vital that the ONDCP Director ensure in the immediate term that these grant programs are funding the President's drug control priorities and not woke nonprofits with leftist policy agendas. Thus, the President must insure that the ONDCP is managed by political appointees who are committed to the Administration's agenda and not acquiesce to management by political or career military personnel who oversaw the prior Administration's ONDCP.

GENDER POLICY COUNCIL (GPC)

The President should immediately revoke Executive Order 14020[41] and every policy, including subregulatory guidance documents, produced on behalf of or related to the establishment or promotion of the Gender Policy Council and its subsidiary issues. Abolishing the Gender Policy Council would eliminate central promotion of abortion ("health services"); comprehensive sexuality education ("education"); and the new woke gender ideology, which has as a principal tenet "gender affirming care" and "sex-change" surgeries on minors. In addition to eliminating the council, developing new structures and positions will have the dual effect of demonstrating that promoting life and strengthening the family is a priority while also facilitating more seamless coordination and consistency across the U.S. government.

Specifically, the President should appoint a position/point of contact with the rank of Special Assistant to the President or higher to coordinate and lead the President's domestic priorities on issues related to life and family in cooperation with the Domestic Policy Council. This position would be responsible for facilitating meetings, discussions, and agreements among personnel; coordinating Administration policy; and ensuring agency support for implementation of policies related to the promotion of life and family in the United States.

OFFICE OF THE VICE PRESIDENT (OVP)

The Vice President is elected to the second highest office in the nation and plays a constitutionally vital role as President-in-waiting. The Vice President is also

the President of the Senate and is charged with breaking tie votes in that body. In recent years, the Vice President has been granted office space in the West Wing and the Eisenhower Executive Office Building.

The OVP is another one of the levers that the President should use to execute his agenda. This is particularly true because there is significant and unique leverage that the Vice President's leadership of the OVP can evoke to shape policy discussions and outcomes. Every other appointed White House official serves at the pleasure of the President, whereas the Vice President is elected, and the process for filling vacancies in that Article II constitutional office, which includes confirmation of a replacement Vice President by a majority of both Houses of Congress, is governed by the Twenty-Fifth Amendment.[42]

The Vice President has his or her own economic advisers, domestic policy and national security staff, and daily intelligence briefings. The Vice President should fill his or her office with strong and sound policy minds to effectively assist the President in fulfilling his agenda.

The Vice President is also a statutory member of the National Security Council.[43] In theory, in light of the fact that the Vice President is a member of the Smithsonian Institution's Board of Regents,[44] there is nothing to prevent Congress from assigning the Vice President additional statutory duties.

All of the component councils and offices discussed in this chapter include real policy development and implementation authority, and a robust OVP should be fully integrated into all policy-formation procedures. Only a Vice President who is deeply steeped in the interworking of the interagency and policy councils can offer useful advice and prove helpful in accomplishing the President's agenda. It is also obvious, in view of the fact that many former Vice Presidents have gone on to be elected President in their own right,[45] that the Vice Presidency can act as a training ground for presidential office.

In the past, the Vice President has been tasked with leading certain initiatives or issues. For example, Mike Pence was tasked with coordinating the federal response to COVID-19, and both Pence and Kamala Harris have chaired the National Space Council. Vice Presidents Richard Cheney and Dan Quayle were also active on the deregulatory front and in imposing regulatory moratoria. However, OVP officials should be fully integrated into each and every process from the start of a new Administration and not have to wait to be invited to join various meetings or working groups on an ad hoc basis. For example, the budget and regulatory review processes are linchpins in the execution of policy, and the OVP should have a seat at the table through every phase of policy development.

Past Vice Presidents have also spent significant time abroad serving as a type of brand ambassador for the White House and, more broadly, for the United States, announcing Administration priorities and coordinating with heads of state and other top officials of foreign governments. The Vice President, as President of the

Senate, often serves as a presidential emissary to the Senate and thus can be especially helpful in securing passage of the President's legislative agenda.

To the extent that he or she desires, a Vice President can have a direct role in shaping Administration policy. A Vice President who regularly attends meetings and disperses staff across the interagency and policy councils is a Vice President whose voice will be heard.

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3

CENTRAL PERSONNEL AGENCIES: MANAGING THE BUREAUCRACY

Donald Devine,
Dennis Dean Kirk,
and Paul Dans

OVERVIEW

From the very first *Mandate for Leadership*, the "personnel is policy" theme has been the fundamental principle guiding the government's personnel management. As the U.S. Constitution makes clear, the President's appointment, direction, and removal authorities are the central elements of his executive power.[1] In implementing that power, the people and the President deserve the most talented and responsible workforce possible.

Who the President assigns to design and implement his political policy agenda will determine whether he can carry out the responsibility given to him by the American people. The President must recognize that whoever holds a government position sets its policy. To fulfill an electoral mandate, he must therefore give personnel management his highest priority, including Cabinet-level precedence.

The federal government's immense bureaucracy spreads into hundreds of agencies and thousands of units and is centered and overseen at the top by key central personnel agencies and their governing laws and regulations. The major separate personnel agencies in the national government today are:

- The Office of Personnel Management (OPM);
- The Merit Systems Protection Board (MSPB);
- The Federal Labor Relations Authority (FLRA); and
- The Office of Special Counsel (OSC).

Title 5 of the U.S. Code charges the OPM with executing, administering, and enforcing the rules, regulations, and laws governing the civil service.[2] It grants the OPM direct responsibility for activities like retirement, pay, health, training, federal unionization, suitability, and classification functions not specifically granted to other agencies by statute. The agency's Director is charged with aiding the President, as the President may request, in preparing such civil service rules as the President prescribes and otherwise advising the President on actions that may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees.

The MSPB is the lead adjudicator for hearing and resolving cases and controversies for 2.2 million federal employees.[3] It is required to conduct fair and neutral case adjudications, regulatory reviews, and actions and studies to improve the workforce. Its court-like adjudications investigate and hear appeals from agency actions such as furloughs, suspensions, demotions, and terminations and are appealable to the U.S. Court of Appeals.

The FLRA hears appeals of agency personnel cases involving federal labor grievance procedures to provide judicial review with binding decisions appealable to appeals courts.[4] It interprets the rights and duties of agencies and employee labor organizations—on management rights, OPM interpretations, recognition of labor organizations, and unfair labor practices—under the general principle of bargaining in good faith and compelling need.

The OSC serves as the investigator, mediator, publisher, and prosecutor before the MSPB with respect to agency and employees regarding prohibited personnel practices, Hatch Act[5] politicization, Uniformed Services Employment and Reemployment Rights Act[6] issues, and whistleblower complaints.[7]

The Equal Employment Opportunity Commission (EEOC) has general responsibility for reviewing charges of employee discrimination against all civil rights breaches. However, it also administers a government employee section that investigates and adjudicates federal employee complaints concerning equal employment violations as with the private sector.[8] This makes the agency an additional de facto factor in government personnel management.

While not a personnel agency per se, the General Services Administration (GSA) is charged with general supervision of contracting.[9] Today, there are many more contractors in government than there are civil service employees. The GSA must therefore be a part of any personnel management discussion.

ANALYSIS AND RECOMMENDATIONS

OPM: Managing the Federal Bureaucracy. At the very pinnacle of the modern progressive program to make government competent stands the ideal of professionalized, career civil service. Since the turn of the 20th century,

progressives have sought a system that could effectively select, train, reward, and guard from partisan influence the neutral scientific experts they believe are required to staff the national government and run the administrative state. Their U.S. system was initiated by the Pendleton Act of 1883[10] and institutionalized by the 1930s New Deal to set principles and practices that were meant to ensure that expert merit rather than partisan favors or personal favoritism ruled within the federal bureaucracy. Yet, as public frustration with the civil service has grown, generating calls to "drain the swamp," it has become clear that their project has had serious unintended consequences.

The civil service was devised to replace the amateurism and presumed corruption of the old spoils system, wherein government jobs rewarded loyal partisans who might or might not have professional backgrounds. Although the system appeared to be sufficient for the nation's first century, progressive intellectuals and activists demanded a more professionalized, scientific, and politically neutral Administration. Progressives designed a merit system to promote expertise and shield bureaucrats from partisan political pressure, but it soon began to insulate civil servants from accountability. The modern merit system increasingly made it almost impossible to fire all but the most incompetent civil servants. Complying with arcane rules regarding recruiting, rating, hiring, and firing simply replaced the goal of cultivating competence and expertise.

In the 1970s, Georgia Democratic Governor Jimmy Carter, then a political unknown, ran for President supporting New Deal programs and their Great Society expansion but opposing the way they were being administered. The policies were not actually reducing poverty, increasing prosperity, or improving the environment, he argued, and to make them work required fundamental bureaucratic reform. He correctly charged that almost all government employees were rated as "successful," all received the same pay regardless of performance, and even the worst were impossible to fire—and he won the presidency.

President Carter fulfilled his campaign promise by hiring Syracuse University Dean Alan Campbell, who served first as Chairman of the U.S. Civil Service Commission and then as Director of the OPM and helped him devise and pass the Civil Service Reform Act of 1978 (CSRA)[11] to reset the basic structure of today's bureaucracy. A new performance appraisal system was devised with a five rather than three distribution of rating categories and individual goals more related to agency missions and more related to employee promotion for all. Pay and benefits were based directly on improved performance appraisals (including sizable bonuses) for mid-level managers and senior executives. But time ran out on President Carter before the act could be fully executed, so it was left to President Ronald Reagan and his new OPM and agency leadership to implement.

Overall, the new law seemed to work for a few years under Reagan, but the Carter–Reagan reforms were dissipated within a decade. Today, employee evaluation is back

to pre-reform levels with almost all rated successful or above, frustrating any relation between pay and performance. An "outstanding" rating should be required for Senior Executive Service (SES) chiefs to win big bonuses, but a few years ago, when it was disclosed that the Veterans Administration executives who encouraged false reporting of waiting lists for hospital admission were rated outstanding, the Senior Executive Association justified it, telling Congress that only outstanding performers would be promoted to the SES in the first place and that precise ratings were unnecessary.[12] The Government Accountability Office (GAO), however, has reported that pay raises, within-grade pay increases, and locality pay for regular employees and executives have become automatic rather than based on performance—as a result of most employees being rated at similar appraisal levels.[13]

OPM: Merit Hiring in a Merit System. It should not be impossible even for a large national government to hire good people through merit selection. The government did so for years, but it has proven difficult in recent times to select personnel based on their knowledge, skills, and abilities (KSA) as the law dictates. Yet for the past 34 years, the U.S. civil service has been unable to distinguish consistently between strong and unqualified applicants for employment.

As the Carter presidency was winding down, the U.S. Department of Justice and top lawyers at the OPM contrived with plaintiffs to end civil service IQ examinations because of concern about their possible impact on minorities. The OPM had used the Professional and Administrative Career Examination (PACE) general intelligence exam to select college graduates for top agency employment, but Carter Administration officials—probably without the President's informed concurrence—abolished the PACE through a legal consent court decree capitulating to demands by civil rights petitioners who contended that it was discriminatory. The judicial decree was to last only five years but still controls federal hiring and is applied to all KSA tests even today.

General ability tests like the PACE have been used successfully to assess the usefulness and cost-effectiveness of broad intellectual qualities across many separate occupations. Courts have ruled that even without evidence of overt, intentional discrimination, such results might suggest discrimination. This doctrine of disparate impact could be ended legislatively or at least narrowed through the regulatory process by a future Administration. In any event, the federal government has been denied the use of a rigorous entry examination for three decades, relying instead on self-evaluations that have forced managers to resort to subterfuge such as preselecting friends or associates that they believe are competent to obtain qualified employees.

In 2015, President Barack Obama's OPM began to introduce an improved merit examination called USAHire, which it had been testing quietly since 2012 in a few agencies for a dozen job descriptions. The tests had multiple-choice questions with only one correct answer. Some questions even required essay replies: questions

that would change regularly to depress cheating. President Donald Trump's OPM planned to implement such changes but was delayed because of legal concerns over possible disparate impact.

Courts have agreed to review the consent decree if the Uniform Guidelines on Employee Selection Procedures setting the technical requirements for sound exams are reformed. A government that is unable to select employees based on KSA-like test qualifications cannot work, and the OPM must move forward on this very basic personnel management obligation.

The Centrality of Performance Appraisal. In the meantime, the OPM must manage the workforce it has. Before they can reward or discipline federal employees, managers must first identify who their top performers are and who is performing less than adequately. In fact, as Ludwig von Mises proved in his classic *Bureaucracy*,[14] unlike the profit-and-loss evaluation tool used in the private sector, government performance measurement depends totally on a functioning appraisal system. If they cannot be identified in the first place within a functioning appraisal system, it is impossible to reward good performance or correct poor performance. The problem is that the collegial atmosphere of a bureaucracy in a multifaceted appraisal system that is open to appeals makes this a very challenging ideal to implement successfully.

The GAO reported more recently that overly high and widely spread performance ratings were again plaguing the government, with more than 99 percent of employees rated fully successful or above by their managers, a mere 0.3 percent rated as minimally successful, and 0.1 percent actually rated unacceptable.[15] Why? It is human nature that no one appreciates being told that he or she is less than outstanding in every way. Informing subordinates in a closely knit bureaucracy that they are not performing well is difficult. Rating compatriots is even considered rude and unprofessional. Moreover, managers can be and often are accused of racial or sexual discrimination for a poor rating, and this discourages honesty.

In 2018, President Trump issued Executive Order 13839[16] requiring agencies to reduce the time for employees to improve performance before corrective action could be taken; to initiate disciplinary actions against poorly performing employees more expeditiously; to reiterate that agencies are obligated to make employees improve; to reduce the time for employees to respond to allegations of poor performance; to mandate that agencies remind supervisors of expiring employee probationary periods; to prohibit agencies from entering into settlement agreements that modify an employee's personnel record; and to reevaluate procedures for agencies to discipline supervisors who retaliate against whistleblowers. Unfortunately, the order was overturned by the Biden Administration,[17] so it will need to be reintroduced in 2025.

The fact remains that meaningfully evaluating employees' performance is a critical part of a manager's job. In the Reagan appraisal process, managers were evaluated on how they themselves rated their subordinates. This is critical to

responsibility and improved management. It is essential that political executives build policy goals directly into employee appraisals both for mission success and for employees to know what is expected. Indistinguishable from their coworkers on paper, hard-working federal employees often go unrewarded for their efforts and are often the system's greatest critics. Federal workers who are performing inadequately get neither the benefit of an honest appraisal nor clear guidance on how to improve. Political executives should take an active role in supervising performance appraisals of career staff, not unduly delegate this responsibility to senior career managers, and be willing to reward and support good performers.

Merit Pay. Performance appraisal means little to daily operations if it is not tied directly to real consequences for success as well as failure. According to a survey of major U.S. private companies—which, unlike the federal government, also have a profit-and-loss evaluation—90 percent use a system of merit pay for performance based on some type of appraisal system. Despite early efforts to institute merit pay throughout the federal government, however, compensation is still based primarily on seniority rather than merit.

Merit pay for executives and managers was part of the Carter reforms and was implemented early in the Reagan presidency. Beginning in the summer of 1982, the Reagan OPM entered 18 months of negotiations with House and Senate staff on extending merit pay to the entire workforce. Long and detailed talks between the OPM and both Democrats and Republicans in Congress ensued, and a final agreement was reached in 1983 that supposedly ensured the passage of legislation creating a new Performance Management and Recognition System (PMRS) for all, (not just management) GS-13 through GS-15 employees.

Meanwhile, the OPM issued regulations to expand the role of performance related to pay throughout the entire workforce, but congressional allies of the employee unions, led by Representative Steny Hoyer (D) of government employee–rich Maryland, stoutly resisted this extension of pay-for-performance and, with strong union support, used the congressional appropriations process to block OPM administrative pay reforms. Bonuses for SES career employees survived, but performance appraisals became so high and widely distributed that there was little relationship between performance and remuneration.

Ever since the original merit pay system for federal managers (GM-13 through GM-15 grade levels, just below the SES) was allowed to expire in September 1993, little to nothing has been done either to reinstate the federal merit pay program for managers or to distribute performance rating evaluations for the SES, much less to extend the program to the remainder of the workforce. A reform-friendly President and Congress might just provide the opportunity to create a more comprehensive performance plan; in the meantime, however, political executives should use existing pay and especially fiscal awards strategically to reward good performance to the degree allowed by law.

Making the Appeals Process Work. The nonmilitary government dismissal rate is well below 1 percent, and no private-sector industry employee enjoys the job security that a federal employee enjoys. Both safety and justice demand that managers learn to act strategically to hire good and fire poor performers legally. The initial paperwork required to separate poor or abusive performers (when they are infrequently identified) is not overwhelming, and managers might be motivated to act if it were not for the appeals and enforcement processes. Formal appeal in the private sector is mostly a rather simple two-step process, but government unions and associations have been able to convince politicians to support a multiple and extensive appeals and enforcement process.

As noted, there are multiple administrative appeals bodies. The FLRA, OSC, and EEOC have relatively narrow jurisdictions. Claims that an employee's removal or disciplinary actions violate the terms of a collective bargaining agreement between an agency and a union are handled by the FLRA, employees who claim their removal was the result of discrimination can appeal to the EEOC, and employees who believe their firing was retribution for being a whistleblower can go to the OSC. While the MSPB specializes in abuses of direct merit system issues, it can and does hear and review almost any of the matters heard by the other agencies.

Cases involving race, gender, religion, age, pregnancy, disability, or national origin can be appealed to the EEOC or the MSPB—and in some cases to both—and to the OSC. This gives employees multiple opportunities to prove their cases, and while the EEOC, MSPB, FLRA, and OSC may all apply essentially the same burden of proof, the odds of success may be substantially different in each forum. In fact, forum shopping among them for a friendlier venue is a common practice, but frequent filers face no consequences for frivolous complaints. As a result, meritorious cases are frequently delayed, denying relief and justice to truly aggrieved individuals.

The MSPB can and does handle all such matters, but it faces a backlog of an estimated 3,000 cases of people who were potentially wrongfully terminated or disciplined as far back as 2013. From 2017–2022 the MSPB lacked the quorum required to decide appeals. On the other hand, as of January 2023, the EEOC had a backlog of 42,000 cases.

While federal employees win appeals relatively infrequently—MSPB administrative judges have upheld agency decisions as much as 80 percent of the time—the real problem is the time and paperwork involved in the elaborate process that managers must undergo during appeals. This keeps even the best managers from bringing cases in all but the most egregious cases of poor performance or misconduct. As a result, the MSPB, EEOC, FLRA, and OSC likely see very few cases compared to the number of occurrences, and nonperformers continue to be paid and often are placed in nonwork positions.

Having a choice of appeals is especially unique to the government. If lower-priority issues were addressed in-house, serious adverse actions would be less subject

to delay. With the proper limitation of labor union actions, the FLRA should have limited reason for appeals. The EEOC's federal employee section should be transferred to the MSPB, and many of the OCS's investigatory functions should be returned to the OPM. The MSPB could then become the main reviewer of adverse actions, greatly simplifying the burdensome appeal process.

Making Civil Service Benefits Economically and Administratively Rational. In recent years, the combined wages and benefits of the executive branch civilian workforce totaled $300 billion according to official data. But even that amount does not properly account for billions in unfunded liability for retirement and other government reporting distortions. Official data also report employment as approximately 2 million, but this ignores approximately 20 million contractors who, while not eligible for government pay and benefits, do receive them indirectly through contracting (even if they are less generous). Official data also claim that national government employees are paid less than private-sector employees are paid for similar work, but several more neutral sources demonstrate that public-sector workers make more on average than their private-sector counterparts. All of this extravagance deserves close scrutiny.

Market-Based Pay and Benefits. According to current law, federal workers are to be paid wages comparable to equivalent private-sector workers rather than compared to all private-sector employees. While the official studies claim that federal employees are underpaid relative to the private sector by 20 percent or more, a 2016 Heritage Foundation study found that federal employees received wages that were 22 percent higher than wages for similar private-sector workers; if the value of employee benefits was included, the total compensation premium for federal employees over their private-sector equivalents increased to between 30 percent and 40 percent.[18] The American Enterprise Institute found a 14 percent pay premium and a 61 percent total compensation premium.[19]

Base salary is only one component of a federal employee's total compensation. In addition to high starting wages, federal employees normally receive an annual cost-of-living adjustment (available to all employees) and generous scheduled raises known as step increases. Moreover, a large proportion of federal employees are stationed in the Washington, D.C., area and other large cities and are entitled to steep locality pay enhancement to account for the high cost of living in these areas.

A federal employee with five years' experience receives 20 vacation days, 13 paid sick days, and all 10 federal holidays compared to an employee at a large private company who receives 13 days of vacation and eight paid sick days. Federal health benefits are more comparable to those provided by *Fortune* 500 employers with the government paying 72 percent of the weighted average premiums, but this is much higher than for most private plans. Almost half of private firms do not offer any employer contributions at all.

The obvious solution to these discrepancies is to move closer to a market model for federal pay and benefits. One need is for a neutral agency to oversee pay hiring decisions, especially for high-demand occupations. The OPM is independent of agency operations, so it can assess requirements more neutrally. For many years, with its Special Pay Rates program, the OPM evaluated claims that federal rates in an area were too low to attract competent employees and allowed agencies to offer higher pay when needed rather than increased rates for all. Ideally, the OPM should establish an initial pay schedule for every occupation and region, monitor turnover rates and applicant-to-position ratios, and adjust pay and recruitment on that basis. Most of this requires legislation, but the OPM should be an advocate for a true equality of benefits between the public and private sectors.

Reforming Federal Retirement Benefits. Career civil servants enjoy retirement benefits that are nearly unheard of in the private sector. Federal employees retire earlier (normally at age 55 after 30 years), enjoy richer pension annuities, and receive automatic cost-of-living adjustments based on the areas in which they retire. Defined-benefit federal pensions are fully indexed for inflation—a practice that is extremely rare in the private sector. A federal employee with a preretirement income of $25,000 under the older of the two federal retirement plans will receive at least $200,000 more over a 20-year period than will private-sector workers with the same preretirement salary under historic inflation levels.

During the early Reagan years, the OPM reformed many specific provisions of the federal pension program to save billions administratively. Under OPM pressure, Reagan and Congress ultimately ended the old Civil Service Retirement System (CSRS) entirely for new employees, which (counting disbursements for the unfunded liability) accounted for 51.3 percent of the federal government's total payroll. The retirement system that replaced it—the Federal Employees Retirement System (FERS)—reduced the cost of federal employee retirement disbursements to 28.5 percent of payroll (including contributions to Social Security and the employer match to the Thrift Savings Plan). More of the pension cost was shifted to the employee, but the new system was much more equitable for the 40 percent who received few or no benefits under the old system.

By 1999, more than half of the federal workforce was covered by the new system, and the government's per capita share of the cost (as the employer) was less than half the cost of the old system: 20.2 percent of FERS payroll vs. 44.3 percent of CSRS payroll, representing one of the largest examples of government savings anywhere. Although the government pension system has become more like private pension systems, it still remains much more generous, and other means might be considered in the future to move it even closer to private plans.

GSA: Landlord and Contractor Management. The General Services Administration is best known as the federal government's landlord—designing, constructing, managing, and preserving government buildings and leasing and

managing outside commercial real estate contracting with 376.9 million square feet of space. Obviously, as its prime function, real estate expertise is key to the GSA's success. However, the GSA is also the government's purchasing agent, connecting federal purchasers with commercial products and services in the private sector and their personnel management functions. With contractors performing so many functions today, the GSA therefore becomes a de facto part of governmentwide personnel management. The GSA also manages the Presidential Transition Act (PTA) process, which also directly involves the OPM. A recent proposal would have incorporated the OPM and GSA (and OMB). Fortunately, this did not take place in that form, but it would make sense for GSA and OPM leadership and staff to hold regular meetings to work through matters of common interest such as moderating PTA personnel restrictions and the relationships between contract and civil service employees.

Reductions-in-Force. Reducing the number of federal employees seems an obvious way to reduce the overall expense of the civil service, and many prior Administrations have attempted to do just this. Presidents Bill Clinton and Barack Obama began their terms, as did Ronald Reagan and Donald Trump, by mandating a freeze on the hiring of new federal employees, but these efforts did not lead to permanent and substantive reductions in the number of nondefense federal employees.

First, it is a challenge even to know which workers to cut. As mentioned, there are 2 million federal employees, but since budgets have exploded, so has the total number of personnel with nearly 10 times more federal contractors than federal employees. Contractors are less expensive because they are not entitled to high government pensions or benefits and are easier to fire and discipline. In addition, millions of state government employees work under federal grants, in effect administering federal programs; these cannot be cut directly. Cutting federal employment can be helpful and can provide a simple story to average citizens, but cutting functions, levels, funds, and grants is much more important than setting simple employment size.

Simply reducing numbers can actually increase costs. OMB instructions following President Trump's employment freeze told agencies to consider buyout programs, encouraging early retirements in order to shift costs from current budgets in agencies to the retirement system and minimize the number of personnel fired. The Environmental Protection Agency immediately implemented such a program, and OMB urged the passage of legislation to increase payout maximums from $25,000 to $40,000 to further increase spending under the "cuts." President Clinton's OMB had introduced a similar buyout that cost the Treasury $2.8 billion, mostly for those who were going to retire anyway. Moreover, when a new employee is hired to fill a job recently vacated in a buyout, the government for a time is paying two people to fill one job.

What is needed at the beginning is a freeze on all top career-position hiring to prevent "burrowing-in" by outgoing political appointees. Moreover, four factors determine the order in which employees are protected during layoffs: tenure, veterans' preference, seniority, and performance in that order of importance. Despite several attempts in the House of Representatives during the Trump years to enact legislation that would modestly increase the weight given to performance over time-of-service, the fierce opposition by federal managers associations and unions representing long-serving but not necessarily well-performing constituents explains why the bills failed to advance. A determined President should insist that performance be first and be wary of costly types of reductions-in-force.

Impenetrable Bureaucracy. The GAO has identified almost a hundred actions that the executive branch or Congress could take to improve efficiency and effectiveness across 37 areas that span a broad range of government missions and functions. It identified 33 actions to address mission fragmentation, overlap, and duplication in the 12 areas of defense, economic development, health, homeland security, and information technology. It also identified 59 other opportunities for executive agencies or Congress to reduce the cost of government operations or enhance revenue collection across 25 areas of government.[20]

A logical place to begin would be to identify and eliminate functions and programs that are duplicated across Cabinet departments or spread across multiple agencies. Congress hoped to help this effort by passing the Government Performance and Results Act of 1993,[21] which required all federal agencies to define their missions, establish goals and objectives, and measure and report their performance to Congress. Three decades of endless time-consuming reports later, the government continues to grow but with more paper and little change either in performance or in the number of levels between government and the people.

The Brookings Institution's Paul Light emphasizes the importance of the increasing number of levels between the top heads of departments and the people at the bottom who receive the products of government decision-making. He estimates that there are perhaps 50 or more levels of impenetrable bureaucracy and no way other than imperfect performance appraisals to communicate between them.[22]

The Trump Administration proposed some possible consolidations, but these were not received favorably in Congress, whose approval is necessary for most such proposals. The best solution is to cut functions and budgets and devolve responsibilities. That is a challenge primarily for Presidents, Congress, and the entire government, but the OPM still needs to lead the way governmentwide in managing personnel properly even in any future smaller government.

Creating a Responsible Career Management Service. The people elect a President who is charged by Article 2, Section 3 of the Constitution[23] with seeing that the laws are "faithfully executed" with his political appointees democratically linked to that legitimizing responsibility. An autonomous bureaucracy has neither

independent constitutional status nor separate moral legitimacy. Therefore, career civil servants by themselves should not lead major policy changes and reforms.

The creation of the Senior Executive Service was the top career change introduced by the 1978 Carter–Campbell Civil Service Reform Act. Its aim was to professionalize the career service and make it more responsible to the democratically elected commander in chief and his political appointees while respecting the rights due to career employees, very much including those in the top positions. The new SES would allow management to be more flexible in filling and reassigning executive positions and locations beyond narrow specialties for more efficient mission accomplishment and would provide pay and large bonuses to motivate career performance.

The desire to infiltrate political appointees improperly into the high career civil service has been widespread in every Administration, whether Democrat or Republican. Democratic Administrations, however, are typically more successful because they require the cooperation of careerists, who generally lean heavily to the Left. Such burrowing-in requires career job descriptions for new positions that closely mirror the functions of a political appointee; a special hiring authority that allows the bypassing of veterans' preference as well as other preference categories; and the ability to frustrate career candidates from taking the desired position.

President Reagan's OPM began by limiting such SES burrowing-in, arguing that the proper course was to create and fill political positions. This simultaneously promotes the CSRA principle of political leadership of the bureaucracy and respects the professional autonomy of the career service. But this requires that career SES employees should respect political rights too. Actions such as career staff reserving excessive numbers of key policy positions as "career reserved" to deny them to noncareer SES employees frustrate CSRA intent. Another evasion is the general domination by career staff on SES personnel evaluation boards, the opposite of noncareer executives dominating these critical meeting discussions as expected in the SES. Career training also often underplays the political role in leadership and inculcates career-first policy and value viewpoints.

Frustrated with these activities by top career executives, the Trump Administration issued Executive Order 13957[24] to make career professionals in positions that are not normally subject to change as a result of a presidential transition but who discharge significant duties and exercise significant discretion in formulating and implementing executive branch policy and programs an exception to the competitive hiring rules and examinations for career positions under a new Schedule F. It ordered the Director of OPM and agency heads to set procedures to prepare lists of such confidential, policy-determining, policymaking, or policy-advocating positions and prepare procedures to create exceptions from civil service rules when careerists hold such positions, from which they can relocate back to the regular civil service after such service. The order was subsequently reversed by President

Biden[25] at the demand of the civil service associations and unions. It should be reinstated, but SES responsibility should come first.

Managing Personnel in a Union Environment. Historically, unions were thought to be incompatible with government management. There is a natural limit to the bargaining power of private-sector unions, but the financial bottom line of public-sector unions is not similarly constrained. If private-sector unions push too hard a bargain, they can so harm a company or so reduce efficiency that their employer is forced to go out of business and eliminate union jobs altogether. There is no such limit in government, which cannot go out of business, so demands can be excessive without negatively affecting employee and union bottom lines.

Even Democratic President Franklin Roosevelt considered union representation in the federal government to be incompatible with democracy. Striking and even threats of bargaining and delay were considered acts against the people and thus improper. It was not until President John Kennedy that union representation in the federal government was recognized—and then merely by executive order. Labor bargaining was not set in statute until the Carter Administration was forced by Congress to do so in order to pass the CSRA, although all bargaining was placed under OPM review.

The CSRA was able to maintain strong management rights for the OPM and agencies and forbade collective bargaining on pay and benefits as well as management prerogatives. Over time, OPM, FLRA, and agencies' personnel offices and courts, especially in Democratic Administrations, narrowed management rights so that labor bargaining expanded as management rights contracted. But the management rights are still in statute, have been enforced by some Administrations, and should be enforced again by any future OPM and agency managements, which should not be intimidated by union power.

Rather than being daunted, President Trump issued three executive orders:

- Executive Order 13836, encouraging agencies to renegotiate all union collective bargaining agreements to ensure consistency with the law and respect for management rights;[26]
- Executive Order 13837, encouraging agencies to prevent union representatives from using official time preparing or pursuing grievances or from engaging in other union activity on government time;[27] and
- Executive Order 13839, encouraging agencies both to limit labor grievances on removals from service or on challenging performance appraisals and to prioritize performance over seniority when deciding who should be retained following reductions-in-force.[28]

All were revoked by the Biden Administration[29] and should be reinstated by the next Administration, to include the immediate appointment of the FLRA General Counsel and reactivation of the Impasses Panel.

Congress should also consider whether public-sector unions are appropriate in the first place. The bipartisan consensus up until the middle of the 20th century held that these unions were not compatible with constitutional government.[30] After more than half a century of experience with public-sector union frustrations of good government management, it is hard to avoid reaching the same conclusion.

Fully Staffing the Ranks of Political Appointees. The President must rely legally on his top department and agency officials to run the government and on top White House staff employees to coordinate operations through regular Cabinet and other meetings and communications. Without this political leadership, the career civil service becomes empowered to lead the executive branch without democratic legitimacy. While many obstacles stand in his way, a President is constitutionally and statutorily required to fill the top political positions in the executive branch both to assist him and to provide overall legitimacy.

Most Presidents have had some difficulty obtaining congressional approval of their appointees, but this has worsened recently. After the 2016 election, President Trump faced special hostility from the opposition party and the media in getting his appointees confirmed or even considered by the Senate. His early Office of Presidential Personnel (PPO) did not generally remove political appointees from the previous Administration but instead relied mostly on prior political appointees and career civil servants to run the government. Such a reliance on holdovers and bureaucrats led to a lack of agency control and the absolute refusal of the Acting Attorney General from the Obama Administration to obey a direct order from the President.

Under the early PPO, the Trump Administration appointed fewer political appointees in its first few months in office than had been appointed in any recent presidency, partly because of historically high partisan congressional obstructions but also because several officials announced that they preferred fewer political appointees in the agencies as a way to cut federal spending. Whatever the reasoning, this had the effect of permanently hampering the rollout of the new President's agenda. Thus, in those critical early years, much of the government relied on senior careerists and holdover Obama appointees to carry out the sensitive responsibilities that would otherwise belong to the new President's appointees.

Fortunately, the later PPO, OPM, and Senate leadership began to cooperate to build a strong team to implement the President's personnel appointment agenda. Any new Administration would be wise to learn that it will need a full cadre of sound political appointees from the beginning if it expects to direct this enormous federal bureaucracy. A close relationship between the PPO at the White House and the OPM, coordinating with agency assistant secretaries of administration

and PPO's chosen White House Liaisons and their staff at each agency, is essential to the management of this large, multilevel, resistant, and bureaucratic challenge. If "personnel is policy" is to be our general guide, it would make sense to give the President direct supervision of the bureaucracy with the OPM Director available in his Cabinet.

A REFORMED BUREAUCRACY

Today, the federal government's bureaucracy cannot even meet its own civil service ideals. The merit criteria of ability, knowledge, and skills are no longer the basis for recruitment, selection, or advancement, while pay and benefits for comparable work are substantially above those in the private sector. Retention is not based primarily on performance, and for the most part, inadequate performance is not appraised, corrected, or punished.

The authors have made many suggestions here that, if implemented, could bring that bureaucracy more under control and enable it to work more efficiently and responsibly, which is especially required for the half of civilian government that administers its undeniable responsibilities for defense and foreign affairs. While a better administered central bureaucracy is crucial for both those and domestic responsibilities, the problem of properly running the government goes beyond simple bureaucratic administration. The specific deficiencies of the federal bureaucracy—size, levels of organization, inefficiency, expense, and lack of responsiveness to political leadership—are rooted in the progressive ideology that unelected experts can and should be trusted to promote the general welfare in just about every area of social life.

The Constitution, however, reserved a few enumerated powers to the federal government while leaving the great majority of domestic activities to state, local, and private governance. As James Madison explained: "The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement and prosperity of the state."[31] Modern progressive politics has simply given the national government more to do than the complex separation-of-powers Constitution allows.

That progressive system has broken down in our time, and the only real solution is for the national government to do less: to decentralize and privatize as much as possible and then ensure that the remaining bureaucracy is managed effectively along the lines of the enduring principles set out in detail here.

AUTHORS' NOTE: The authors are grateful for the collaborative work of the individuals listed as contributors to this chapter for the 2025 Presidential Transition Project. The authors alone assume responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

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Section Two

THE COMMON DEFENSE

While the lives of Americans are affected in noteworthy ways, for better or worse, by each part of the executive branch, the inherent importance of national defense and foreign affairs makes the Departments of Defense and State first among equals. Originating in the George Washington Administration, the War Department (as it was then known) was headed by Henry Knox, America's chief artillery officer in the Revolutionary War; Thomas Jefferson, the primary author of the Declaration of Independence, was the first Secretary of State. Despite such long and storied histories, neither department is currently living up to its standards, and the success of the next presidency will be determined in part by whether they can be significantly improved in short order.

"Ever since our Founding," former acting secretary of defense Christopher Miller writes in Chapter 4, "Americans have understood that the surest way to avoid war is to be prepared for it in peace." Yet the Department of Defense "is a deeply troubled institution." It has emphasized leftist politics over military readiness, "Recruiting was the worst in 2022 that it has been in two generations," and "the Biden Administration's profoundly unserious equity agenda and vaccine mandates have taken a serious toll." Additionally, Miller writes that "the atrophy of our defense industrial base, the impact of sequestration, and effective disarmament by many U.S. allies have exacted a high toll on America's military." Moreover, our military has adopted a risk-averse culture—think of masked soldiers, sailors, and airmen—rather than instilling and rewarding courage in thought and action.

The good news is that most enlisted personnel, and most officers, especially below the rank of general or admiral, continue to be patriotic defenders of liberty.

But this is now Barack Obama's general officer corps. That is why Russ Vought argues in Chapter 2 that the National Security Council "should rigorously review all general and flag officer promotions to prioritize the core roles and responsibilities of the military over social engineering and non-defense related matters, including climate change, critical race theory, manufactured extremism, and other polarizing policies that weaken our armed forces and discourage our nation's finest men and women from enlisting." Ensuring that many of America's best and brightest continue to choose military service is essential.

"By far the most significant danger" to America from abroad, Miller writes, "is China." That communist regime "is undertaking a historic military buildup," which "could result in a nuclear force that matches or exceeds America's own nuclear arsenal." Resisting Chinese expansionist aims "requires a denial defense" whereby we make "the subordination of Taiwan or other U.S. allies in Asia prohibitively difficult." However, Miller adds that "[c]ritically, the United States must be able to do this at a level of cost and risk that Americans are willing to bear."

The best gauge of such willingness is congressional approval. Accordingly, we must rediscover and adhere to the Founders' wise division of war powers, whereby Congress, the most representative and deliberative branch, decides whether to go to war; and the executive, the most energetic and decisive branch, decides how to carry it out once begun. As the past 75 years have repeatedly demonstrated in different ways—from Korea, to Vietnam, to Iraq, to Afghanistan—we depart from our constitutional design at our peril.

Miller writes that we "must treat missile defense as a top priority," ensure that more of our weapons are made in America, reform the budgeting process, and sustain "an efficient and effective counterterrorism enterprise." Across all of our efforts, we must keep in mind that part of peace through strength is knowing when to fight. As George Washington warned nearly two centuries ago, we must continue to be on guard against being drawn into conflicts that do not justify great loss of American treasure or significant shedding of American blood. At the same time, we must be prepared to defend our interests and meet challenges where and when they arise.

An effective diplomatic corps is central to defending our interests and influencing world events. Whereas most military personnel have had leftist priorities imposed from above, the problem at State comes largely from within. Former State Department director of policy planning Kiron Skinner writes in Chapter 6, "[L]arge swaths of the State Department's workforce are left-wing and predisposed to disagree with a conservative President's policy agenda and vision." She adds that the department possesses a "belief that it is an independent institution that knows what is best for the United States, sets its own foreign policy, and does not need direction from an elected President"—a view that does not align with the Constitution.

The solution to this problem is strong political leadership. Skinner writes, "The next Administration must take swift and decisive steps to reforge the department into a lean and functional diplomatic machine that serves the President and, thereby, the American people." Because the Senate has been extraordinarily lax in fulfilling its constitutional obligation to confirm presidential appointees, she recommends putting appointees into acting roles until such time as the Senate confirms them.

Skinner writes that State should also stop skirting the Constitution's treaty-making requirements and stop enforcing "agreements" as treaties. It should encourage more trade with allies, particularly with Great Britain, and less with adversaries. And it should implement a "sovereign Mexico" policy, as our neighbor "has functionally lost its sovereignty to muscular criminal cartels that effectively run the country." In Africa, Skinner writes, the U.S. "should focus on core security, economic, and human rights" rather than impose radical abortion and pro-LGBT initiatives. Divisive symbols such as the rainbow flag or the Black Lives Matter flag have no place next to the Stars and Stripes at our embassies.

When it comes to China, Skinner writes that "a policy of 'compete where we must, but cooperate where we can'…has demonstrably failed." The People's Republic of China's (PRC) "aggressive behavior," she writes, "can only be curbed through external pressure." Efforts to protect or excuse China must stop. She observes, "[M]any were quick to dismiss even the possibility that COVID escaped from a Chinese research laboratory." Meanwhile, Skinner writes, "[g]lobal leaders including President Joe Biden…have tried to normalize or even laud Chinese behavior." She adds, "In some cases, these voices, like global corporate giants BlackRock and Disney"—or the National Basketball Association (NBA)—"directly benefit from doing business with Beijing."

Former vice president of the U.S. Agency for Global Media Mora Namdar writes in Chapter 8 that we need to have people working for USAGM who actually believe in America, rather than allowing the agencies to function as anti-American, taxpayer-funded entities that parrot our adversaries' propaganda and talking points. Former acting deputy secretary of homeland security Ken Cuccinelli says in Chapter 5 that the Department of Homeland Security (DHS), a creation of the George W. Bush era, should be closed, as it has added needless additional bureaucracy and expense without corresponding benefit. He recommends that it be replaced with a new "stand-alone border and immigration agency at the Cabinet level" and that the remaining parts of DHS be distributed among other departments.

Former chief of staff for the director of National Intelligence Dustin Carmack writes in Chapter 7 that the U.S. Intelligence Community is too inclined to look in the rearview mirror, engage in "groupthink," and employ an "overly cautious" approach aimed at personal approval rather than at offering the most accurate, unvarnished intelligence for the benefit of the country. And in Chapter 9, former acting deputy administrator of the U.S. Agency for International Development Max

Primorac asserts that the United States Agency for International Development (USAID) must be reformed, writing, "The Biden Administration has deformed the agency by treating it as a global platform to pursue overseas a divisive political and cultural agenda that promotes abortion, climate extremism, gender radicalism, and interventions against perceived systematic racism."

If the recommendations in the following chapters are adopted, what Skinner says about the State Department could be true for other parts of the federal government's national security and foreign policy apparatus: The next conservative President has the opportunity to restructure the making and execution of U.S. defense and foreign policy and reset the nation's role in the world. The recommendations outlined in this section provide guidance on how the next President should use the federal government's vast resources to do just that.

4

DEPARTMENT OF DEFENSE

Christopher Miller

The Constitution requires the federal government to "provide for the common defence."[1] It assigns to Congress the authority to "raise and support Armies" and to "provide and maintain a Navy"[2] and specifies that the President is "commander in Chief" of America's armed forces.[3] Ever since our Founding, Americans have understood that the surest way to avoid war is to be prepared for it in peace—but when deterrence fails, we must fight and win.

The Department of Defense (DOD) is the largest part of our federal government. It has almost 3 million people serving in uniform or a civilian capacity throughout the world and consumes approximately $850 billion annually—more than 50 percent of our government's discretionary spending.

The DOD is also a deeply troubled institution. Historically, the military has been one of America's most trusted institutions, but years of sustained misuse, a two-tiered culture of accountability that shields senior officers and officials while exposing junior officers and soldiers in the field, wasteful spending, wildly shifting security policies, exceedingly poor discipline in program execution, and (most recently) the Biden Administration's profoundly unserious equity agenda and vaccine mandates have taken a serious toll.

Our disastrous withdrawal from Afghanistan, our impossibly muddled China strategy, the growing involvement of senior military officers in the political arena, and deep confusion about the purpose of our military are clear signals of a disturbing decay and markers of a dangerous decline in our nation's capabilities and will. Additionally, more than 100,000 Americans die annually in large measure because

of illicit narcotics flows—more than four times as many people in one year as we lost in our 20-year war against al-Qaeda.

We also are witnessing a transformation in the character of war. The democratization of technology and the collapse of time and space require dramatic, thoughtful changes in how we defend, deter, and fight. As with any huge bureaucracy—and the DOD is one of the world's largest—breaking the status quo requires leadership and endurance. Technology is critical to maintaining our warfighting primacy, but we must be leery of the siren song that technology alone can protect us. More important is how new technologies are developed, tested, procured, and used, and that relies on the true competitive advantages of our people: ingenuity, common sense, and thoughtfulness grounded in a free society. Because war will continue to be the most stressful and consequential human endeavor, the most powerful weapon systems will remain the six inches between the ears of our citizens and the strength of their hearts and content of their souls.

Military service is the most difficult task we ask of our citizens, and our nation is enormously blessed that so many young, patriotic Americans eagerly volunteer to carry such a heavy burden. We owe them everything, and we must do better. To do better, however, means recognizing and implementing four overriding priorities:

- **Priority No. 1:** Reestablish a culture of command accountability, nonpoliticization, and warfighting focus.

- **Priority No. 2:** Transform our armed forces for maximum effectiveness in an era of great-power competition.

- **Priority No. 3:** Provide necessary support to Department of Homeland Security (DHS) border protection operations. Border protection is a national security issue that requires sustained attention and effort by *all* elements of the executive branch.

- **Priority No. 4:** Demand financial transparency and accountability.

This chapter offers recommendations for improving our armed forces and the civilian organizations that support and oversee them.

DOD POLICY

By far the most significant danger to Americans' security, freedoms, and prosperity is China. China is by any measure the most powerful state in the world other than the United States itself. It apparently aspires to dominate Asia and then, from that position, become globally preeminent. If Beijing could achieve this goal, it could dramatically undermine America's core interests, including by restricting

U.S. access to the world's most important market. Preventing this from happening must be the top priority for American foreign and defense policy.

Beijing presents a challenge to American interests across the domains of national power, but the military threat that it poses is especially acute and significant. China is undertaking a historic military buildup that includes increasing capability for power projection not only in its own region, but also far beyond as well as a dramatic expansion of its nuclear forces that could result in a nuclear force that matches or exceeds America's own nuclear arsenal.

The most severe immediate threat that Beijing's military poses, however, is to Taiwan and other U.S. allies along the first island chain in the Western Pacific. If China could subordinate Taiwan or allies like the Philippines, South Korea, and Japan, it could break apart any balancing coalition that is designed to prevent Beijing's hegemony over Asia. Accordingly, the United States must ensure that China does not succeed. This requires a denial defense: the ability to make the subordination of Taiwan or other U.S. allies in Asia prohibitively difficult. Critically, the United States must be able to do this at a level of cost and risk that Americans are willing to bear given the relative importance of Taiwan to China and to the U.S.

The United States and its allies also face real threats from Russia, as evidenced by Vladimir Putin's brutal war in Ukraine, as well as from Iran, North Korea, and transnational terrorism at a time when decades of ill-advised military operations in the Greater Middle East, the atrophy of our defense industrial base, the impact of sequestration, and effective disarmament by many U.S. allies have exacted a high toll on America's military.

This is a grim landscape. The United States needs to deal with these threats forthrightly and with strength, but it also needs to be realistic. It cannot wish away these problems. Rather, it must confront them with a clear-eyed recognition of the need for choice, discipline, and adequate resources for defense.

In this light, U.S. defense strategy must identify China unequivocally as the top priority for U.S. defense planning while modernizing and expanding the U.S. nuclear arsenal and sustaining an efficient and effective counterterrorism enterprise. U.S. allies must also step up, with some joining the United States in taking on China in Asia while others take more of a lead in dealing with threats from Russia in Europe, Iran, the Middle East, and North Korea. The reality is that achieving these goals will require more spending on defense, both by the United States and by its allies, as well as active support for reindustrialization and more support for allies' productive capacity so that we can scale our free-world efforts together.

Needed Reforms

- **Prioritize a denial defense against China.** U.S. defense planning should focus on China and, in particular, the effective denial defense of Taiwan.

This focus and priority for U.S. defense activities will deny China the first island chain.

1. Require that all U.S. defense efforts, from force planning to employment and posture, focus on ensuring the ability of American forces to prevail in the pacing scenario and deny China a *fait accompli* against Taiwan.

2. Prioritize the U.S. conventional force planning construct to defeat a Chinese invasion of Taiwan before allocating resources to other missions, such as simultaneously fighting another conflict.

- **Increase allied conventional defense burden-sharing.** U.S. allies must take far greater responsibility for their conventional defense. U.S. allies must play their part not only in dealing with China, but also in dealing with threats from Russia, Iran, and North Korea.

1. Make burden-sharing a central part of U.S. defense strategy with the United States not just helping allies to step up, but strongly encouraging them to do so.

2. Support greater spending and collaboration by Taiwan and allies in the Asia–Pacific like Japan and Australia to create a collective defense model.

3. Transform NATO so that U.S. allies are capable of fielding the great majority of the conventional forces required to deter Russia while relying on the United States primarily for our nuclear deterrent, and select other capabilities while reducing the U.S. force posture in Europe.

4. Sustain support for Israel even as America empowers Gulf partners to take responsibility for their own coastal, air, and missile defenses both individually and working collectively.

5. Enable South Korea to take the lead in its conventional defense against North Korea.

- **Implement nuclear modernization and expansion.** The United States manifestly needs to modernize, adapt, and expand its nuclear arsenal. Russia maintains and is actively brandishing a very large nuclear arsenal, but China is also undertaking a historic nuclear breakout.

1. Expand and modernize the U.S. nuclear force so that it has the size, sophistication, and tailoring to deter Russia and China simultaneously.

2. Develop a nuclear arsenal with the size, sophistication, and tailoring—including new capabilities at the theater level—to ensure that there is no circumstance in which America is exposed to serious nuclear coercion.

- **Increase allied counterterrorist burden-sharing.** Transnational terrorism remains a threat to Americans even as we pivot toward Asia.

1. Sustain the military forces needed to deter, prevent, and combat terrorism, but at a sustainable cost in concert with other elements of national power and partner efforts.

2. Prioritize enhancing the capability of allies and partners to take the lead in combating terrorism in their regions.

DOD ACQUISITION AND SUSTAINMENT (A&S)

The DOD's ability to acquire and field new and existing technologies is essential to the ability of America's military personnel to fight and win our nation's wars. To succeed in this endeavor, we must optimize the systems and personnel that the department uses, but the inflexible bureaucratic structure and risk-adverse culture that have developed over the decades make it difficult to provide the tools that warfighters need at the speed of relevance.

The number one problem is the DOD budgeting process (instituted in 1961) that requires acquisition spending to be locked years in advance. Because technologies change so rapidly and requirements can change overnight, this creates situations in which military personnel not only go to war with outdated technology, but also may be fighting with equipment that is less capable than that of their competitors. America owes its military many things, and the most important is the resources they need to survive on the battlefield and carry out the tasks we ask of them.

Needed Reforms

- **Reform the planning, programming, budgeting, and execution (PPBE) process.**

1. Enhance funding and authority for DOD mission-focused innovation organizations and away from program-specific stovepipes that, planned for and designed two or three years earlier, may no longer be

relevant. This allows the acquisition community to focus on portfolio management and move money around more easily instead of being locked into inflexible, multiyear procurement cycles.

2. The President should examine the recommendations of the congressionally mandated Commission on Planning, Programming, Budgeting, and Execution Reform[4] and develop a strategy for implementing those that the Administration considers to be in the best interests of the American people. The commission's final report is due on September 1, 2023.

3. Develop legislation or other means of providing funding outside the traditional PPBE process for the prototyping and experimentation of emerging technologies that are deemed essential to modernization and future conflict. Consider creating a "fast track" for projects that satisfy the most pressing national security needs.

4. Require the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary for Research and Engineering, and all service secretaries to conduct "Night Court" and use existing authorities to terminate outdated or underperforming programs so that money can be used for what works and will work. Require the Under Secretaries and service secretaries to brief the Secretary annually on the results.

5. Require the Office of the Secretary of Defense to research and report on the acquisition processes used by America's adversaries to improve our understanding of how they are often able to innovate and field new technologies on a faster timeline.

- **Strengthen America's defense industrial base.**

1. Replenish and maintain U.S. stockpiles of ammunition and other equipment that have been depleted as a result of U.S. support to Ukraine. This will strengthen the defense industry supply chain and ensure that adequate inventory exists if it is needed for a future conflict.

2. Collaborate with industry to develop a prioritized list of reforms that the DOD and Congress can enact and implement to incentivize industry to help America's military innovate and field needed capabilities.

3. Strengthen the ability of acquisition authorities to engage in multiyear procurements and block buys. This will improve private-sector rates of return, thereby incentivizing defense contractors to partner with the government. It will also reduce government overhead by reducing the number of procurement competitions.

4. Prioritize the U.S. and allies under the "domestic end product" and "domestic components" requirements of the Build America, Buy America Act.[5] Currently, defense companies are required to manufacture defense items for the U.S. government that are 100 percent domestically produced and at least 50 percent composed of domestically produced components. However, there are loopholes that allow companies to manufacture these items overseas. This can create supply chain and other issues, especially in wartime. Manufacturing components and end products domestically and with allies spurs factory development, increases American jobs, and builds resilience in America's defense industrial base.

5. Review the sectors currently prioritized for onshoring or "friendshoring" of manufacturing (kinetic capabilities, castings and forgings, critical materials, microelectronics, space, and electric vehicle batteries); evaluate them according to the strategic landscape; and expand or reprioritize the list as appropriate.

6. Help small businesses to become medium-size and large vendors, which encourages a more resilient industrial base and fosters competition. Encourage and plan for durable supply chains for small businesses so they also have commercial/private-sector customers and are not solely dependent on defense orders, which can be highly specialized, expensive, and irregular.

7. Increase external engagement among small businesses to inform them of DOD's needs and how they could work with DOD to meet national security priorities.

- **Optimize the DOD acquisition community.**

1. Create incentives to emphasize speed and agility in decision-making for prototyping and program-of-record starts and terminations. Most bureaucrats would rather follow a checklist and fail than go outside the procedures and win because failure means negative

career repercussions. Senior acquisition leaders should design a system that allows decision-makers to stay within the law but bypass unnecessary departmental regulations that are not in the best interest of the government and hamper the acquisition of capabilities that warfighters require.

2. The Under Secretary of Defense for Acquisition and Sustainment, Under Secretary for Research and Engineering, and all service secretaries should assess their acquisition workforces; determine what additional personnel, resources, and training they need; and develop implementation plans. The goal is to develop, prototype, acquire, and field required capabilities at the speed of relevance to meet America's pacing threats and maintain a warfighting advantage.

3. Decentralize Defense Acquisition University (DAU) offerings and expand the DAU mission to include accreditation of non-DOD institutions. The critical shortage of trained and certified acquisition personnel must be addressed with urgency in order to support DOD mission objectives and goals. With the rapid evolution of training and educational technologies, including remote and virtual practices, there is no reason for DAU to maintain a monopoly on the knowledge and certification that are required to perform as acquisition professionals. Further, the cost to private contractors and non-DOD civilians who aspire to such a role limits the supply of trained and certified candidates. DAU has become an unnecessary barrier to entry in a career field that is vital to the DOD mission.

DOD RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (RDT&E)

The FY 2017 National Defense Authorization Act established the position of Under Secretary of Defense for Research and Engineering and assigned broad responsibility for "all defense research and engineering, technology development, technology transition, prototyping, experimentation, and developmental testing activities and programs, including the allocation of resources for defense research and engineering, and unifying defense research and engineering efforts across the Department," to the new Under Secretary, who also was tasked with "serving as the principal advisor to the Secretary on all research, engineering, and technology development activities and programs in the Department."[6] This led to the single largest DOD structural change since the Goldwater–Nichols act of 1986[7] and was organized effectively during President Donald Trump's Administration.

Needed Reforms

- **Champion, engage, and focus the American innovation ecosystem.** To maintain leadership in the era of great-power competition and succeed against our adversaries, a key DOD effort must be the creation of mechanisms and processes to embrace America's most significant competitive advantage: innovation.

    1. Engage and leverage all of America's scientific, engineering, and high-tech production communities to research, develop, prototype, and rapidly deploy advanced technology capabilities on a continuing basis to preserve our warfighting advantage.

    2. Increase integration and collaboration among the DOD, government labs, and private companies to solve the department's most difficult problems.

    3. Reduce the number of critical technology areas from 14 to a more manageable number to concentrate effort and resources on those that bear directly on great-power competition.

    4. Rebuild RDT&E infrastructure that resides in Cold War–era facilities and is not well-suited to the current era of rapid development and testing of advanced technology and concepts to the maturity level necessary for acquisition and operational fielding.

    5. Move toward a much more comprehensive independent risk-reduction approach to increase understanding of the technical risks by drawing on the expertise in DOD laboratories and agencies to help acquisition programs succeed.

- **Improve the rapid deployment of technology to the battlefield.** America's military advantage has derived from the professionalism of our servicemembers and our ability to manifest our technological advantage in battlefield capability. The current era of great-power competition will continue for the foreseeable future, and technology will be the currency of competition. Our ability to prevail will rest on our ability to develop new technologies and move them onto the battlefield more rapidly than our adversaries can.

    1. Accelerate the prototyping cycle to meet immediate battlefield needs.

    2. Require tighter integration with user communities to provide value.

3. Establish a pipeline of near-term, mid-term, and long-term technology that is aimed at great-power competition (China) and can be matured, prototyped, and evaluated to support major acquisitions (the ability to produce at scale) to break the cycle of schedule delays and cost overruns from underdeveloped and poorly understood technologies.

- **Develop a framework to protect the RDT&E enterprise from foreign exploitation.** Strategic competition and adaptive adversaries require new thinking about how to protect technology. China has been relentless in stealing U.S. technology, using the full range of measures from influence operations to outright theft. This has been a major factor in its ability to close the gap and in some cases to exceed U.S. capabilities.

  1. Implement a comprehensive approach to preserving U.S. technological leadership that is based on outpacing our adversaries; clear about what we need to protect; tailored to various specific sectors (for example, academia, the defense industrial base, and laboratories); and underpinned with a full range of consequences for attempted or actual theft.

DOD FOREIGN MILITARY SALES

The United States must regain its role as the "Arsenal of Democracy." In fiscal year (FY) 2021, U.S. government foreign military sales (FMS) nosedived to a low of $34.8 billion from a record high of $55.7 billion in FY 2018.[8] This decrease hinders interoperability with partners and allies, decreases defense industrial base capacity, and increases the taxpayer burden on the U.S. military's own procurements. Under previous Administrations, the United States built its reputation as a reliable partner with a strong defense industrial base that could supply military articles and goods in a timely manner. Today's FMS process is encumbered by byzantine bureaucracy, long contracting times, high costs, and mundane technology.

The United States can change this downward trajectory by improving internal processes that incentivize partners and allies to procure U.S. defense systems, thereby expanding our "defense ecosystem." We must reverse the recent dip in FMS to ensure both that our partners remain interoperable with the United States and that our defense industrial base regains much-needed capacity in preparation for future challenges.

Needed Reforms

- **Emphasize exportability with U.S. procurements.** The record-low FMS sales in 2021 were driven partly by the high costs of converting weapon systems on the back end of production rather than emphasizing exportability in initial capability planning.

1. Ensure that senior U.S. military leadership emphasizes exportability in the initial development of defense systems that are both available and interoperable with our partners and allies.

2. Create a funding mechanism to incentivize exportability in initial planning, which can be recouped after future FMS transactions.

- **End informal congressional notification.** Informal congressional notification or "tiered review" is a hinderance to ensuring timely sales to our global partners. The tiered review process is not codified in law; it is merely a practice by which the Department of State provides a preview of prospective arms transfers before Congress is formally notified.[9]

1. End the tiered review process to eliminate at least 20 days from the FMS process.

2. Use the tiered review process only when unanimous congressional support is guaranteed in order to eliminate the "weaponization" by select Members of Congress that has prevented billions of dollars of arms sales from moving into formal congressional notification.

- **Minimize barriers to collaboration.** The high cost of developing advanced defense platforms requires the United States to collaborate with key allies to minimize waste, complement strengths, and supplement our defense industrial base to create a system that is greater than that of the United States alone.

1. Enhance defense industrial base planning with partners to allow them to focus on niche areas where there are cost advantages for the United States.

2. Decrease International Traffic in Arms Regulations (ITAR) to facilitate trade with such allies as the United Kingdom, Canada, and Australia.

3. Create opportunities to improve the health of the defense supply chain with added opportunities for partners and allies to contribute.

- **Reform the FMS contracting process.** The contracting timeline for the FMS process is shockingly slow. On average, the DOD contracting timeline takes approximately 18 months because of slow bureaucratic processes and chronic understaffing.[10]

1. Immediately fund more contracting capacity in all services to decrease the contracting timeline and improve the delivery of defense articles to our global partners.

2. Rationalize and speed arms sales decision-making to preclude our enemies from exploiting bureaucratic slothfulness and allow us to manage the development of indigenous defense industrial bases.

DOD PERSONNEL

The men and women of America's armed forces are the most critical component of our national defense strategy, but in recent years, they have been overextended, undervalued, and insufficiently resourced. Their families help them to carry the burden of service, but the assistance they receive is disproportionately less than the sacrifices they make. Young civilians who would thrive in a military environment are disenfranchised when educators and influencers discourage them from learning about military service and preparing for the honor of wearing America's uniform.

The United States military is an extraordinary institution, staffed by exceptional people who have defended our nation and changed the course of history, but the Biden Administration, through word and deed, has treated the armed forces as just another place to work. We must restore our military to a place of honor and respect and recruit and retain the individuals who will meet the rigorous standards of excellence that are required for membership in the world's greatest fighting force.

Needed Reforms

- **Rescue recruiting and retention.** Recruiting was the worst in 2022 that it has been in two generations and is expected to be even worse in 2023. Some of the problems are self-inflicted and ongoing. The recruiting problem is not service-specific: It affects the entire Joint Force.

    1. Appoint a Special Assistant to the President who will maintain liaison with Congress, DOD, and all other interested parties on the issue of recruiting and retention.

    2. Improve recruiting by suspending the use of the recently introduced MHS Genesis system that uses private medical records of potential recruits at Military Entrance Processing Stations (MEPS), creating unnecessary delays and unwarranted rejections.[11]

    3. Improve military recruiters' access to secondary schools and require completion of the Armed Services Vocational Aptitude Battery

(ASVAB)—the military entrance examination—by all students in schools that receive federal funding.[12]

4. Encourage Members of Congress to provide time to military recruiters during each townhall session in their congressional districts.

5. Increase the number of Junior ROTC programs in secondary schools.

- **Restore standards of lethality and excellence.** Entrance criteria for military service and specific occupational career fields should be based on the needs of those positions. Exceptions for individuals who are already predisposed to require medical treatment (for example, HIV positive or suffering from gender dysphoria) should be removed, and those with gender dysphoria should be expelled from military service. Physical fitness requirements should be based on the occupational field without consideration of gender, race, ethnicity, or orientation.

- **Eliminate politicization, reestablish trust and accountability, and restore faith to the force.** In 2021, the Reagan National Defense Survey found that only 45 percent of Americans have "a great deal of trust and confidence in the military"—down from 70 percent in 2018.[13]

1. Strengthen protections for chaplains to carry out their ministry according to the tenets of their faith.

2. Codify language to instruct senior military officers (three and four stars) to make certain that they understand their primary duty to be ensuring the readiness of the armed forces, not pursuing a social engineering agenda. This direction should be reinforced during the Senate confirmation process. Orders and direction motivated by purely partisan motives should be identified as threats to readiness.

3. Reinstate servicemembers to active duty who were discharged for not receiving the COVID vaccine, restore their appropriate rank, and provide back pay.

4. Eliminate Marxist indoctrination and divisive critical race theory programs and abolish newly established diversity, equity, and inclusion offices and staff.

5. Restrict the use of social media solely for purposes of recruitment and discipline any armed services personnel who use an official command channel to engage with civilian critics on social media.

6. Audit the course offerings at military academies to remove Marxist indoctrination, eliminate tenure for academic professionals, and apply the same rules to instructors that are applied to other DOD contracting personnel.

7. Reverse policies that allow transgender individuals to serve in the military. Gender dysphoria is incompatible with the demands of military service, and the use of public monies for transgender surgeries or to facilitate abortion for servicemembers should be ended.

- **Value the military family.** Military service requires extreme sacrifices by families.

1. Support legislation to increase wages and family allowances for active-duty enlisted personnel. No uniformed personnel should ever have to rely on social benefits like as food stamps or public housing assistance.

2. Improve base housing and consider the military family holistically when considering change-of-station moves.

3. Improve spouse employment opportunities and protections, including licensing reform,[14] and expand childcare.

4. Audit all curricula and health policies in DOD schools for military families, remove all inappropriate materials, and reverse inappropriate policies.

5. Support legislation giving education savings account options to military families.[15]

- **Reduce the number of generals.** Rank creep is pervasive. The number of 0-6 to 0-9 officers is at an all-time high across the armed services (above World War II levels), and the actual battlefield experience of this officer corps is at an all-time low. The next President should limit the continued advancement of many of the existing cadre, many of whom have been advanced by prior Administrations for reasons other than their warfighting prowess.

DOD INTELLIGENCE

Our national defense establishment must evolve to meet the rapid, profound, and dynamic change in the global landscape, but absent significant effort to evaluate and retool in critical areas—including our intelligence and security portfolios—America's competitive advantage against rivals and adversaries is at serious risk. However, for any structural changes to succeed, the crisis in our Intelligence Community (IC)/Defense Intelligence Enterprise (DIE) leadership must be addressed.[16]

The DIE accounts for the bulk of the Intelligence Community's personnel and a significant portion of its budget. Of the IC's 17 elements, eight are within DOD,[17] two are independent,[18] and seven belong to various other departments and agencies.[19] Overall, "[t]he DoD provides 86 percent of the personnel who conduct intelligence activities, both military and civilian."[20]

The Defense Intelligence Enterprise must deliver accurate, unbiased, and timely insights consistently and with clarity, objectivity, and independence. If they continue on their current path, however, both the DIE and the Intelligence Community writ large will continue to provide inaccurate and politicized intelligence assessments that mislead policymakers.

Needed Reforms

- **Improve the intelligence process.** Defense intelligence assets have been committed to the prosecution of operational campaigns since September 11, 2001, at the expense of our strategic objectives, and this has led to increased risk.[21] Further, the DIE has evolved into a "customer-based" model with the DIE/IC trying to be supportive of policy direction at the expense of analytical integrity. The result has been a significant politicization of intelligence.

    1. Establish unbiased intelligence reporting from DIE/IC senior leaders. As the leader of the DIE, the Under Secretary of Defense for Intelligence and Security should provide a top-line, dissenting, or clarifying view of DIE and IC assessments as needed.

    2. Align collection and analysis with vital national interests (countering China and Russia).

    3. Establish an effective global federated intelligence framework with allies and partners and our Combatant Commands. Avoid the temptation to neglect areas that appear less pertinent but that support a convergence of threats and the critical requirements to sustain those threats.

4. Establish and sustain feedback loops to provide insight and direction for continuous improvement and accountability.[22] We must revisit our assessments and understand where we got it right and where we got it wrong.

5. Better exploit publicly available information (PAI) data and foster innovation to improve collection and analysis. We must end the practice of multiple DIE organizations paying to acquire the same PAI data and invest more in machine learning (ML) and artificial intelligence (AI) to exploit open-source and classified intelligence data.

6. Remove policy obstacles that impede available technical solutions and tailored approaches in order to preclude corruption at the point of collection.

7. Develop statistical discrimination techniques based on relative value to deal with the volume and velocity of available data and information, which are rapidly exceeding our ability to exploit and analyze available data and information efficiently.

- **Expand the integration of intelligence activities.** The prevalence of asymmetric warfare requires Defense Intelligence to leverage the unique authorities and capabilities of U.S. departments and agencies, as well as our partners and allies, to competitive advantage.

  1. Create an improved cyber defense and capability. We must reevaluate the dual-hat structure between the National Security Agency (NSA) and U.S. Cyber Command (USCYBERCOM).

  2. Resurrect economic analysis capability to improve our ability to counter Chinese whole-of-government strategies that combine security with predatory economic objectives.

  3. Resurrect critical thinking to provide true strategic intelligence that will enable the U.S. to counter global adversaries and emerging technologies (such as adversary advances in hypersonics, Unmanned Aerial Systems (UAS), cyber domain, advanced fighter aircraft, and advanced undersea capabilities) more effectively.

  4. Rebuild human intelligence (HUMINT) and counterintelligence (CI) and improve their integration with defensive and offensive cyber operations.

5. Establish true alignment between DOD and DHS both to improve the defense of critical U.S. infrastructure and national border integrity and to develop vital information that enables defense against foreign targeted disruptions.[23]

- **Restore accountability and public trust.** In recent years, public trust in Defense Intelligence has been eroded by, for example, flawed assumptions leading up to our Afghanistan withdrawal, flawed Russia–Ukraine assessments, divergences in relations with key Gulf allies, and voids being filled by Russia and China around the world. For trust to be restored and sustained, officials must be held accountable.

    1. Restore DIE critical thinking. Establish mechanisms to restore analytic integrity and return to true intelligence-driven operations. The next Administration should eliminate the conflict of interest in the current customer-based model (in which the customer is always right) by enforcing time-tested procedures that guarantee independent analysis, even if it means challenging policymakers' assumptions. The Under Secretary of Defense for Intelligence and Security's leadership role should be expanded to include providing analytic top-line views and improve DIE transparency by highlighting diverging views.

    2. Elevate the DIE's voice in national policy discussions, commensurate with the DIE's 75 percent share of the IC budget. Present defense intelligence to senior policymakers, either independently to avoid all-source bias or in consensus products like the National Intelligence Estimates.

- **Eliminate peripheral intelligence obligations that do not advance military readiness.** In 2019, following the catastrophic 2015 data breach at the U.S. Office of Personnel Management (OPM), the Defense Counterintelligence and Security Agency (DCSA) accepted transfer of the responsibility to conduct security clearance and suitability investigations for 95 percent of the U.S. government's civilian workforce. This decision, which grew out of an intention to deconstruct OPM, was wrongheaded on many levels and made the federal bureaucracy dependent on a new overlay of DOD bureaucracy, in a sense instilling DOD control of civilian managers. This function should be returned to OPM except for military security clearance investigations.

U.S. ARMY

The U.S. Army's mission is "[t]o deploy, fight and win our nation's wars by providing ready, prompt and sustained land dominance by Army forces across the full spectrum of conflict as part of the joint force."[24] Today, however, the Army cannot execute its land dominance mission.[25] The U.S. Army is at an inflection point that is marked by more than a decade of steadily eroding budgets and diluted buying power, an appreciable degradation in readiness and training capacity, a near crisis in the recruiting and retention of critical personnel, and a bevy of aging weapons systems that no longer provide a qualitative edge over peer and near-peer competitors but will not be replaced in the near term.

All of these challenges are set against the backdrop of a complex and dynamic global geopolitical environment that is exemplified and exacerbated by the triumph of our adversaries in Afghanistan after a 20-year struggle there as well as recent Russian outrages in the Ukraine and China's bellicosity both on its borders and in surrounding disputed regions. In spite of these ever-increasing operational pulls, our Army is consistently being asked to do more with fewer resources. The status quo is further marked by a pervasive politically driven top-down focus on progressive social policies that emphasize matters like so-called diversity, equity, and inclusion and climate change, often to the detriment of the Army's core warfighting mission.

Needed Reforms

- **Rebuild the Army.** The total Army budget has decreased by roughly 11 percent since 2018, perilously affecting the service's readiness and ability to train and to procure new personnel and equipment. Declining budgets and decreased buying power have forced the Army to lower training standards and opportunities to train, propose reductions in end strength, slash military construction programs to historically low levels, and scale back essential modernization programs.

    1. Increase the Army budget to remain the world's preeminent land power.

    2. Accelerate the development and procurement of the six current Army modernization priorities (long-range precision fires, the Next-Generation Combat Vehicle, Future Vertical Lift, the Army network, air and missile defense, and soldier lethality) to replace worn out and outdated combat systems and ensure ground combat dominance.

    3. Increase funding to improve Army training and operational readiness.

    4. Increase the Army force structure by 50,000 to handle two major regional contingencies simultaneously.

5. Reform recruiting efforts. The Army missed its 2022 recruitment goal by 25 percent, or 15,000 soldiers.

- **Focus on deployability and sustained operations.** The U.S. Army's very lethal ground force capability is irrelevant if it cannot quickly deploy to locations for employment in decisive operations to secure our global security interests. Additionally, Army logisticians provide the ground transportation (of both personnel and equipment); fuel, food, and water; munitions (bombs and bullets); medical supplies and services; and veterinary services (food safety) that are critical to sustainment of the other services.

1. Immediately increase the production and stockpiling of critical munitions and repair parts.

2. Prioritize expeditionary logistics in all force design and operational planning to guarantee entry into a contested theater of war.

3. Increase the level of Joint Force training, synchronization, and coordination focused on logistics.

4. Prepare to deploy forces from degraded U.S.-based transportation infrastructure that is compromised by opposing forces.

- **Transform Army culture and training.** The Army can no longer serve as the nation's social testing ground. A rebuilt Army that is focused again on its core warfighting mission and empowered it with the tools, resources, and authorities it needs to accomplish that mission must be the next Administration's highest defense priority.

1. Stop using the Army as a test bed for social evolution. Misusing the Army in this way detracts from its core purpose while doing little to reshape the American social structure. The Army no longer reflects national demographics to the degree that it did before 1974 when the draft was eliminated.

2. Demand accountability in senior leaders to reverse the decline in public support for military service.

3. Reestablish the experiential base for the planning, execution, and leadership of Army formations in large-scale operations. Currently,

there are no general or field-grade officers who served as planners or commanders against a near-peer adversary in combat.

4. Examine the logic of emerging Army concepts about employing massed long-range fires and effects without considering how to gain advantage by closing with and dominating an adversary on land.

5. Recognize that high-intensity land combat operations cannot be sustained through short-term individual or unit rotations in the style of the sustained low-intensity campaigns conducted over the past 20 years.

6. Transform how the National Guard is employed during extended operations short of declared war to preclude back-to-back federal and state deployments of National Guard soldiers in order to stabilize and preserve military volunteerism in our communities.

7. Revamp Army school curricula to concentrate on preparation for large-scale land operations that focus on defeating a peer threat.

8. Address the underlying causal issues driving increasing Army suicide rates, which have surpassed pre–World War II rates and are now eclipsing the rate among civilians.

U.S. NAVY

As noted at the beginning of this chapter, the U.S. Constitution gives Congress the power to "provide and maintain a Navy." Inherent in this phrase is a recognition that there is a vital national interest in the maritime environment and that this national interest requires sustained planning and investment. This is as true today as it was almost 250 years ago and will remain true into the future.

The U.S. Navy (USN) exists for two primary reasons: to project prompt, sustained, and effective combat power globally, both at sea and ashore, and to deter aggression by potential adversaries by maintaining a forward operating presence in conjunction with allies and partners. Today, the People's Republic of China People's Liberation Army Navy (PLAN) can challenge the USN's ability to accomplish its mission in the Pacific and Indian Oceans.

In the production, employment, and control of maritime forces, the USN must consider the scope and rate of technological change and, where appropriate, adapt its processes and workforce development. In balancing the necessary long-term industrial model of naval platforms against emerging short-term opportunities, the USN must take account of advances that may present vulnerabilities and risks as well as what is assured and secure.

Needed Reforms

- **Invest in and expand force structure.** The USN's organizing principle remains platform-centered: vessels manned by sailors. The manned surface and subsurface forces act in concert with land-based, air-based, and space-based forces to project power outside sovereign territory, principally by operating in international waters. Investments must be closely coordinated with these other elements of military power.

    1. Build a fleet of more than 355 ships.[26]

    2. Develop and field unmanned systems to augment the manned forces.

    3. Require that range and lethality be the key factors in all procurement and sustainment decisions for ships, aircraft, and munitions.

- **Reestablish the General Board.** In contrast with the Navy General Board that served ship development so well during the interwar period, the current joint process[27] for defining the requirements for major defense acquisitions is not well-suited to long-term planning of the sort that is needed for USN fleet architecture and shipbuilding. The interwar General Board should serve as a model, empowered with final decision authority over all requirements documents concerning ships and the major defense systems fielded on ships. The individual board members would ensure a broad base of knowledge as well as independent thinking.[28]

- **Establish a Rapid Capabilities Office.** The USN must transition technology into warfighting capability more rapidly. It must foster a culture of innovation that includes connecting theoretical and intangible ideas with real production environments that produce tangible and practical outcomes and adapting proven processes to advance material solutions.

    1. Harness innovation and willingness to tolerate risk so that "good enough" systems can be fielded rapidly.

    2. Use the Space Development Agency as a model.

    3. Establish an oversight Board of Directors made up of the service chief, service secretary, and Under Secretary of Defense for Acquisition and Sustainment.

- **Accelerate the purchase of key munitions.** It takes years to build and maintain navies but only hours to expend their ordnance in combat. The USN must be prepared to expend large quantities of air-launched and sea-launched stealthy, precision, cruise missiles against targets both at sea and ashore. Additionally, modern air defense requires the use of high-performance surface-to-air missiles.

    1. Produce key munitions at the maximum rate with significant capacity.

    2. Working with the Congress, employ the widest possible range of techniques to enhance the munitions supply chains and workforce.

- **Enhance warfighter development.** The USN requires a variety of documented qualifications for personnel to advance in their careers and assume leadership positions. It also requires individual professional qualifications that are focused on warfighting.

    1. Mandate qualifications that demonstrate an understanding of core competence in collective, integrated warfighting, especially based on current plans and technologies.

    2. Elevate the Headquarters Staff focused on Warfighter Development (N7) within the Office of the Chief of Naval Operations (OPNAV) and empower it to develop such requirements.

    3. Require that war games be utilized as experiential learning environments for the participants as a prerequisite for achieving career milestones (department heads, commanding officers, and major commanders).

    4. Highlight in training and leader development that USN forces can and must maintain the ability to operate from and/or defend sovereign territory to include our allies and partners.

    5. Train to balance effects from kinetic to nonkinetic and from lethal to nonlethal through effective command and control.

U.S. AIR FORCE

The U.S. Air Force today lacks a force structure with the lethality, survivability, and capacity to fight a major conflict with a great power like China, deter nuclear threats, and meet its other operational requirements under the National Defense Strategy.[29] For 30 years, the Air Force has received less annual funding

(if pass-through funding, defined as money in the Air Force budget that does not go to the Air Force, is removed from the equation) than the Army and Navy have received. This underfunding has forced the Air Force to cut its forces and forgo modernizing aging weapons systems that were never designed to operate in current threat environments and are structurally and mechanically exhausted. The result is an Air Force that is the oldest, smallest, and least ready in its history.

The decline in Air Force capacity and capability is occurring at the same time the security environment demands the very options that the Air Force uniquely provides. Combatant commanders routinely request more Air Force capabilities than the service has the capacity to provide. The Air Force today simply cannot accomplish all of the missions it is required to perform.

The Air Force has consistently stated on the official record that it is not sized to meet the mission demands placed on it by the various U.S. Combatant Commands. A 2018 study, "The Air Force We Need,"[30] showed a 24 percent deficit in Air Force capacity to meet the needs of the National Defense Strategy. Those conclusions remain valid and are more pronounced today because of subsequent aircraft retirements. The demand is also higher because of world events. To understand these trends, one needs only to consider that the Air Force's future five-year budget plan retires 1,463 aircraft while buying just 467. This makes for a reduction of 996 aircraft by 2027. The net result is a force that is smaller, older, and less ready at a time when demand is burgeoning.

Needed Reforms

- **Increase spending and budget accuracy in line with a threat-based strategy.** Returning the U.S. military to a force that can achieve deterrence or win in a fight if necessary requires returning to a threat-based defense strategy. Real budget growth combined with a more equitable distribution of resources across the armed services is the only realistic way to create a modernized Air Force with the capacity to meet the needs of the National Defense Strategy. Additionally, as noted above, pass-through funding causes numbers cited in current DOD budget documents to be higher than the dollar amounts actually received by the Air Force.

    1. Adopt a two-war force defense strategy with scenarios for each service that will allow the Air Force to attain the resources it requires by developing a force-sizing construct that reflects what is required to accomplish strategic objectives.

    2. Eliminate pass-through funding, which has grown to more than $40 billion per year and has caused the Air Force to be chronically underfunded for decades.

3. Increase the Air Force budget by 5 percent annually (after adjusting for inflation) to reverse the decline in size, age, and readiness and facilitate the transition to a more modern, lethal, and survivable force.

- **Reduce near-term and mid-term risk.** Increasing the Air Force's acquisition of next-generation capabilities that either are or soon will be in production will increase the ability of the United States to deter or defeat near-term to mid-term threats.

1. Increase F-35A procurement to 60–80 per year.

2. Build the capacity for a B-21 production rate of 15–18 aircraft per year along with applicable elements of the B-21 long-range strike family of systems.

3. Increase Air Force airlift and aerial refueling capacity to support agile combat employment operations that generate combat sorties from a highly dispersed posture in both Europe and the Pacific.

4. Develop and buy larger quantities of advanced mid-range weapons (50 nm to 200 nm) that are sized to maximize targets per sortie for stealth aircraft flying in contested environments against target sets that could exceed 100,000 aimpoints.

5. Accelerate the development and production of the Sentinel intercontinental ballistic missile to reduce the risk inherent in an aging Minuteman III force in light of China's nuclear modernization breakout.

6. Increase the number of EC-37B electronic warfare aircraft from 10 to 20 in order to achieve a minimum capacity to engage growing threats from China across the electromagnetic spectrum.

- **Invest in future Air Force programs and efforts.** Increasingly capable adversaries require new capabilities to enable victory against those adversaries.

1. Attain an operationally optimized advanced battle management system as the Air Force element of the DOD Joint All Domain Command and Control enterprise.

2. Produce the next-generation air dominance system of systems (air moving target indication, other sensors, communications, command and control, weapons, and uninhabited aerial vehicles).

3. Achieve moving target engagement capability and capacity against sea, surface, and ground mobile targets at the scale necessary to meet the needs of the National Defense Strategy.

4. Build resilient basing, sustainment, and communications for survivability in a contested environment.

5. Establish a vigorous and sufficiently funded electromagnetic spectrum operations recovery plan to make up for more than 20 years of neglect of this mission area.

U.S. MARINE CORPS

The U.S. Marine Corps (USMC) is the maritime land force of the Department of Defense and Department of the Navy. It serves a critical role as an expeditionary amphibious force that can project power from sea to shore and beyond while performing other specialized missions like securing America's diplomatic outposts abroad.

Between the terrorist attacks of September 11, 2001, and the conclusion of U.S. military operations in Afghanistan in August 2022, the Marine Corps engaged in extended operations ashore as directed by the Secretary of Defense, leaving it with little opportunity or ability to train for and execute the naval and amphibious operations for which it is uniquely suited and directed by law. This lengthy divergence from its primary mission led to deep concern that the Corps had become a "second land army," prompting senior Marine Corps leaders to push for the service to return to the sea. In addition, the USMC spent nearly two decades fighting counterinsurgency wars in Afghanistan and Iraq and developed capabilities that were specifically geared to those fights but have limited utility in scenarios involving evenly matched and advanced enemies or amphibious operations that are necessary for the projection of naval power.

As a result, Marine Corps Commandant General David H. Berger developed and began to implement Force Design 2030,[31] a plan that, if completed, would be the most radical transformation of the Marine Corps since World War II. The successful implementation of this force redesign, coupled with reforms in the Marine Corps' personnel system and the Navy's amphibious shipbuilding plans, will be critical to ensuring the Corps' future combat effectiveness.

Needed Reforms

- **Divest systems to implement the Force Design 2030 transformation.**[32] Divesting equipment that is less relevant to distributed, low-signature operations in a contested maritime environment will make funds available for modernization.

1. Transform USMC force structure.

    a. Eliminate all USMC law enforcement battalions.
    b. Transform at least one Marine Infantry Regiment into a Marine Littoral Regiment.
    c. Reduce the size of remaining infantry battalions.

2. Divest systems or equipment that are better suited to heavier U.S. Army units.

    a. Maintain divestment of M1 Abrams tanks.
    b. Eliminate the majority of tube artillery (M777) batteries.
    c. Reduce the number of Advanced Amphibious Assault Vehicles and the number of their replacements.

3. Use funds made available by divestment of systems to support new systems that are geared to the likely needs of future conflicts.

    a. Increase the number of rocket artillery batteries (HIMARS).
    b. Increase the number of upgraded Light Armored Vehicle (LAV) companies.
    c. Increase the number of Unmanned Aerial Systems and anti-air systems (including counter-UAS systems).
    d. Develop long-range strike missiles and anti-ship missiles for the Corps.
    e. Modernize USMC infantry equipment.

- **Transform the USMC personnel paradigm.** More than other services, the USMC relies heavily on junior noncommissioned officers (NCOs) to staff key positions across the force but especially in combat arms. For example, E-4s routinely hold squad leader billets when the Army normally has E-6s in those billets. The nature of more distributed operations and the increasingly complex responsibilities of a Marine Corps rifle squad and platoon under Force Design 2030 will only put more responsibility on the backs of squad leaders and platoon sergeants, increasing the need for more senior Marines in those critical positions. Additionally, the Corps needs to improve its retention of junior NCOs after their first enlistments (the Marines have much lower rates of reenlistment than other branches).[33]

    1. Align the USMC's combat arms rank structure with the U.S. Army's (squad leader billets are for E-6s, and platoon sergeant billets are for E-7s).

2. Create better incentives to retain talented junior NCOs, especially in infantry and other critical military occupational specialties.

3. Reduce unnecessary deployments to increase dwell time in order to enable more robust primary military education.

- **Align Navy amphibious shipbuilding with Force Design 2030.** The U.S. Navy has struggled for decades to maintain an amphibious fleet that could support USMC war plans around large-scale amphibious operations. In addition, amphibious shipbuilding has often had to compete against other priorities within a constrained budget and limited shipbuilding capacity.

1. Develop and produce light amphibious warships (LAWs) to support more distributed amphibious operations, especially in the Pacific.[34]

2. Maintain between 28 and 31 larger amphibious warships as opposed to the 25 specified in current Navy shipbuilding plans and the 38 specified before 2020.[35]

U.S. SPACE FORCE

U.S. space forces conduct global space operations to sustain and enhance air, land, and sea effectiveness, lethality, and superiority by providing secure broadband global communications (precision position, navigation, and timing accuracy); attack warning and threat tracking and targeting capability (real-time intelligence, surveillance, and reconnaissance information); and their assured continuity of operations both by defending U.S. assets and by conducting offensive operations that are capable of imposing unacceptable losses on adversaries that might seek to attack them.

The U.S. Space Force (USSF) was established to assure continuous global and theater combat support from space, to deter attacks against U.S. space assets, and to prevail in space should deterrence fail. The USSF posture was conceived as a balance of offensive and defensive deterrent capabilities designed for maximum effectiveness.

Needed Reforms

- **Reverse the Biden Administration's defensive posture.** The Biden Administration has eliminated almost all offensive deterrence capabilities and instead will rely solely on defensive capabilities of disaggregation, maneuver, and reconstitution—the most costly, the slowest, and ultimately the most fragile architecture selection.

1. Reestablish offensive capabilities to guarantee a favorable balance of forces, efficiently manage the full deterrence spectrum, and seriously complicate enemy calculations of a successful first strike against U.S. space assets.

2. Restore architectural balance in U.S. space forces, both offensive and defensive, to restore deterrence dominance efficiently and quickly.

3. Rapidly expand space control capability, to include cis-lunar space (the region beginning at geosynchronous altitude and encompassing the moon), to provide early warning of an enemy attack.

4. Seek arms control and "rules of the road" understandings only when they are unambiguously in the interests of the U.S. and its allies, and prohibit their unilateral implementation.

- **Reduce overclassification.** The USSF must move beyond the Cold War–era culture of secrecy and overclassification that surrounded military space to facilitate greater coordination and synchronization of efforts across the government and commercial sectors.

  Declassify appropriate information about terrestrial and on-orbit space capabilities that threaten the U.S. space constellation, as well as those being pursued by our competitors, to secure the principled right to counter them offensively.

- **Implement policies suited to a mature USSF.** No longer a "newborn," the USSF has entered its fourth year of existence, and the lessons learned can be incorporated across all facets of the force to increase its effectiveness.

1. Restructure from the current "unity of effort" structure to "unity of command."

2. Lead the U.S. government's development of a clear and unambiguous declaratory policy that the United States will operate at will in space and enforce these operations with capabilities that ensure effective deterrence and the ability to impose our will if necessary.

3. End the current study phase of concept development and issue necessary guidance for the development and fielding of offensive capabilities.

4. Alter the Space Development Agency's current "fail-early" approach and transition to a methodology that maintains aggressive timelines but with significantly greater engineering rigor, with special attention to sustainment, support, and fully integrated space operations.

5. Increase the number of general officer positions to ensure the Space Force's ability to compete for resources on a common basis with the other services.

6. Explore creation of a Space Force Academy to attract top aero–astro students, engineers, and scientists and develop astronauts. The academy could be attached initially to a large existing research university like the California Institute of Technology or MIT, share faculty and funding, and eventually be built separately to be on par with the other service academies.

U.S. CYBER COMMAND

USCYBERCOM was established in 2010 by the Department of Defense to unify the direction of cyberspace operations, strengthen DOD cyberspace capabilities, and integrate and enhance U.S. cyber expertise. Cyber capabilities and threats are evolving rapidly. Accordingly, a conservative Administration should be especially sensitive to and prepared to meet the challenges presented by bureaucratic silos, inappropriately rigid tactical doctrine, and strategic thinking's historic tendency to lag behind technological capability.

The preliminary evidence from the war in Ukraine suggests that existing cyber doctrine and certain capability and target assumptions may be incorrect or misplaced. The following recommendations therefore presuppose that there will be a rigorous "lessons learned" analysis and review of existing U.S. doctrine in light of the battlefield evidence.

Needed Reforms

- **Ensure that USCYBERCOM is properly focused.** Mission creep is leading to wasteful overlap with the Department of Homeland Security, National Security Agency, Department of Defense, and Central Intelligence Agency.

  1. Separate USCYBERCOM from the National Security Agency per congressional direction.

  2. Conduct effective offensive cyber-effects operations at the tactical and strategic levels.

3. Expand defensive cyber-effects operations authorized by President Trump's classified National Security Presidential Memorandum 13, "United States Cyber Operations Policy."[36]

4. End USCYBERCOM's participation in federal efforts to "fortify" U.S. elections to eliminate the perception that DOD is engaging in partisan politics.

- **Increase USCYBERCOM's effectiveness.**

1. Accelerate the integration of cyber and electronic warfare (EW) doctrine and capabilities, abiding by the time-tested norms of combined-arms warfare.

2. Mandate that development teams will include both coders and soldiers, aircrew, and sailors with kinetic experience at the platoon level.

3. Break the paradigm of cyber authorities held at the strategic level.

4. Increase cyber resilience by, for example, protecting the Nuclear Command, Control, and Communications Network and the Air Force's Cyber Resiliency Office for Weapons Systems (CROWS).

5. Expand coordination of joint operations with allies.

6. Implement the Government Accountability Office's recommendation that the DOD Chief Information Officer, Commander of USCYBERCOM, and Commander of Joint Force Headquarters–DOD Information Network "align policy and system requirements to enable DOD to have enterprise-wide visibility of cyber incident reporting to support tactical, strategic, and military strategies for response."[37]

- **Rationalize strategy and doctrine.**

1. Update the October 2022 National Security Strategy to define DOD roles and responsibilities beyond existing platitudes.

2. Apply traditional deterrence strategies and principles for using cyber/EW in retaliation for foreign cyberattacks and/or EW actions against U.S. infrastructure and citizens.

SPECIAL OPERATIONS FORCES

Even though America's conventional war in Afghanistan was a failure, Special Operations Forces of the United States Special Operation Command (USSOCOM) executed an extremely effective counterterrorism campaign: There has not been another major attack on the homeland, global terrorist threats are reduced and managed, collaboration with international partners is effective, and units under USSOCOM are the most capable and experienced warfighters in two generations.

There is a movement to reduce the scope and scale of USSOCOM's mission in favor of other service priorities in great-power competition. This would be a mistake because USSOCOM can be employed effectively in great-power competition.

It makes sense to capitalize on USSOCOM's experience and repurpose its mission to include irregular warfare within the context of great-power competition, thereby providing a robust organization that is capable of achieving strategic effects that are critical both to our national defense and to the defense of our allies and partners around the globe. Irregular warfare should be used proactively to prevent state and nonstate actors from negatively affecting U.S. policies and objectives while simultaneously strengthening our regional partnerships. If we maintain irregular warfare's traditional focus on nonstate actors, we limit ourselves to addressing only the symptoms (nonstate actors), not the problems themselves (China, Russia, North Korea, and Iran).

Needed Reforms

- **Make irregular warfare a cornerstone of security strategy.** The U.S. can project strength through unified action with our Interagency,[38] allies, and partners by utilizing irregular warfare capabilities synchronized with elements of national power. Broadly redefining irregular warfare to address current state and nonstate actors is critical to countering irregular threats that range from the Chinese use of economic warfare to Russian disinformation and Islamist terrorism. A broad definition of irregular warfare in the National Security Strategy would allow for a whole-of-government approach, thereby providing resources and capabilities to counter threats and ultimately serve as credible deterrence at the strategic and tactical levels.

    1. Define irregular warfare as "a means by which the United States uses all elements of national power to project influence abroad to counter state adversaries, defeat hostile nonstate actors, deter wider conflict, and maintain peace in great-power competition."

    2. Characterize the state and nonstate irregular threats facing the U.S. by region in the National Security Strategy.

3. Direct that irregular warfare resources, capabilities, and strategies be incorporated directly into the overall National Defense Strategy instead of being relegated to a supporting document.

4. Establish an Irregular Warfare Center of Excellence to help DOD train, equip, and organize to conduct irregular warfare as a core competency across the spectrum of competition, crisis, and conflict.

- **Counter China's Belt and Road Initiative (BRI) globally.** DOD, in conjunction with the Interagency, allies, and partner nations, must work proactively to counter China's BRI around the globe.

1. Task USSOCOM and corresponding organizations in the Pentagon with conceptualizing, resourcing, and executing regionally based operations to counter the BRI with a focus on nations that are key to our energy policy, international supply chains, and our defense industrial base.

2. Use regional and global information operations to highlight Chinese violations of Exclusive Economic Zones, violations of human rights, and coercion along Chinese fault lines in Xinjiang Province, Hong Kong, and Taiwan in addition to China's weaponization of sovereign debt.

3. Directly counter Chinese economic power with all elements of national power in North America, Central America, and the Caribbean to maintain maritime freedom of movement and protect the digital infrastructure of nations in the region.

- **Establish credible deterrence through irregular warfare to protect the homeland.** A whole-of-government approach and willingness to employ cyber, information, economic, and counterterrorist irregular warfare capabilities should be utilized to protect the homeland.

1. Include the designation of USSOCOM as lead for the execution of irregular warfare against hostile state and nonstate actors in the National Defense Strategy.

2. Demonstrate a willingness to employ offensive cyber capabilities against adversaries who conduct cyberattacks against U.S. infrastructure, businesses, personnel, and governments.

3. Employ a "name and shame" approach by making information regarding the names of entities that target democratic processes and international norms available in a transparent manner.

4. Work with the Interagency to employ economic warfare, lawfare, and diplomatic pressure against hostile state and nonstate actors.

5. Maintain the authorities necessary for an aggressive counterterrorism posture against threats to the homeland.

NUCLEAR DETERRENCE

Nuclear deterrence is one of the most critical elements of U.S. national security, as it forms a backstop to U.S. military forces. Every operational plan relies on the assumption that nuclear deterrence holds. Ever since the U.S. first acquired nuclear weapons, Administrations of both parties have pursued a strategy designed to deter nuclear and non-nuclear attack; assure allies; and, in the event of nuclear employment, restore deterrence at the lowest possible cost to the U.S. Today, however, America's ability to meet these goals is increasingly challenged by the growing nuclear threats posed by our adversaries.

- China is pursuing a strategic breakout of its nuclear forces, significantly shifting the nuclear balance and forcing the U.S. to learn how to deter two nuclear peer competitors (China and Russia) simultaneously for the first time in its history.

- Russia is expanding its nuclear arsenal and using the threat of nuclear employment as a coercive tactic in its war on Ukraine.

- North Korea is advancing its nuclear capabilities.

- Iran is inching closer to nuclear capability.

Meanwhile, all U.S. nuclear capabilities and the infrastructure on which they rely date from the Cold War and are in dire need of replacement. The next Administration will need to focus on continuing the effort to modernize the nuclear triad while updating our strategy and capabilities to meet the challenges presented by a more threatening nuclear environment.

Needed Reforms

- **Prioritize nuclear modernization.** All components of the nuclear triad are far beyond their intended lifetimes and will need to be replaced over the next

decade. This effort is required for the U.S. to maintain its nuclear triad—and will be the bare minimum needed to maintain U.S. strategic nuclear deterrence.

1. Accelerate the timelines of critical modernization programs including the Sentinel missile, Long Range Standoff Weapon (LRSO), *Columbia*-class ballistic missile submarine, B-21 bomber, and F-35 Dual Capable Aircraft.

2. Reject any congressional proposals that would further extend the service lives of U.S. capabilities such as the Minuteman III ICBM.

3. Ensure sufficient funding for warhead life extension programs (LEP), including the B61-12, W80-4, W87-1 Mod, and W88 Alt 370.

- **Develop the Sea-Launched Cruise Missile-Nuclear (SLCM-N).** In 2018, the Trump Administration proposed restoring the SLCM-N to help fill a growing gap in U.S. nonstrategic capabilities and improve deterrence against limited nuclear attack.[39] The Biden Administration canceled this program in its 2022 Nuclear Posture Review (NPR).[40] The next President should support and accelerate funding for development of the SLCM-N with the goal of deployment by the end of the decade.

- **Account for China's nuclear expansion.** To ensure its ability to deter both Russia and the growing Chinese nuclear threat, the U.S. will need more than the bare minimum of nuclear modernization. President Biden's 2022 NPR described the problem but proposed no recommendations to restore or maintain nuclear deterrence.

1. Consider procuring more modernized nuclear systems (such as the Sentinel missile or LRSO) than currently planned.

2. Improve the ability of the U.S. to utilize the triad's upload capacity in case of a crisis.

3. Review what capabilities in addition to the SLCM-N (for example, nonstrategic weapons or new warhead designs) are needed to deter the unique Chinese threat.

- **Restore the nuclear infrastructure.** The United States must restore its necessary nuclear infrastructure so that it is capable of producing and maintaining nuclear weapons.

1. Accelerate the effort to restore plutonium pit production, which is essential both for modern warhead programs and for recapitalizing the stockpile.

2. Continue to invest in rebuilding infrastructure, including facilities at the National Laboratories that support nuclear weapons development.

3. Restore readiness to test nuclear weapons at the Nevada National Security Site to ensure the ability of the U.S. to respond quickly to asymmetric technology surprises.

- **Correctly orient arms control.** The U.S. should agree to arms control agreements only if they help to advance the interests of the U.S. and its allies.

1. Reject proposals for nuclear disarmament that are contrary to the goal of bolstering deterrence.

2. Pursue arms control as a way to secure the national security interests of the U.S. and its allies rather than as an end in itself.

3. Prepare to compete in order to secure U.S. interests should arms control efforts continue to fail.

MISSILE DEFENSE

Missile defense is a critical component of the U.S. national security architecture. It can help to deter attack by instilling doubt that an attack will work as intended, take adversary "cheap shots" off the table, and limit the perceived value of missiles as tools of coercion. It also allows space for diplomacy during a crisis and can protect U.S. and allied forces, critical assets, and populations if deterrence fails.[41] Adversaries are relying increasingly on missiles to achieve their aims.

- China and Russia, in addition to their vast and growing ballistic missile inventories, are deploying new hypersonic glide vehicles and investing in new ground-launched, air-launched, and sea-launched cruise missiles that uniquely challenge the United States in different domains.

- North Korea has pursued an aggressive missile testing program and is becoming increasingly belligerent toward South Korea and Japan.

- Iran continues to maintain a missile arsenal that is capable of striking U.S. and allied assets in the Middle East and Europe, and its rocket launches demonstrate that it either has or is developing the ability to build ICBMs.

Missile defense has been underprioritized and underfunded in recent years. In light of these growing threats, the incoming Administration should treat missile defense as a top priority.

Needed Reforms

- **Champion the benefits of missile defense.** Despite its deterrence and damage-limitation benefits, opponents argue incorrectly that U.S. missile defense is destabilizing because it threatens Russian and Chinese second-strike capabilities.

    1. Reject claims made by the Left that missile defense is destabilizing while acknowledging that Russia and China are developing their own advanced missile defense systems.

    2. Commit to keeping homeland missile defense off the table in any arms control negotiations with Russia and China.[42]

- **Strengthen homeland ballistic missile defense.** The United States currently deploys 44 Ground-Based Interceptors (GBIs) as part of its Ground-based Midcourse Defense (GMD) system to defend the homeland against North Korea, but as North Korea improves its missile program, this system is at risk of falling behind the threat.[43]

    1. Buy at least 64 of the Next Generation Interceptor (NGI), which is more advanced than the GBI, for an eventual uniform fleet of interceptors.[44] The Biden Administration currently plans to buy only 20.

    2. Consider additional steps to strengthen the GMD system such as a layered missile defense or a third interceptor site on the East Coast.

- **Increase the development of regional missile defense.** As the Ukraine conflict amply demonstrates, U.S. regional missile defense capabilities are very limited. The United States has been unable to supply our partners reliably with any capabilities, and the number and types of regional missile defense platforms are less than the U.S. needs for its own defense. The U.S. should prioritize procurement of more regional defense systems such as Theater High Altitude Area Defense (THAAD), Standard Missile-3, and Patriot missiles.

- **Change U.S. missile defense policy.** Historically, the U.S. has chosen to rely solely on deterrence to address the Russian and Chinese ballistic

missile threat to the homeland and to use homeland missile defense only against rogue nations.

1. Abandon the existing policy of not defending the homeland against Russian and Chinese ballistic missiles and focus on how to improve defense as the Russian and Chinese missile threats increase at an unprecedented rate.[45]

2. Invest in future advanced missile defense technologies like directed energy or space-based missile defense that could defend against more numerous missile threats.

- **Invest in new track-and-intercept capabilities.** The advent of hypersonic missiles and increased numbers of cruise missile arsenals by threat actors poses new challenges to our missile defense capabilities.

1. Invest in cruise missile defense of the homeland.[46]

2. Accelerate the program to deploy space-based sensors that can detect and track missiles flying on nonballistic trajectories.[47]

3. Accelerate the Glide Phase Interceptor, which is intended to counter hypersonic weapons.

AUTHOR'S NOTE: The mission of the Department of Defense is to provide the military forces needed to deter war and ensure our nation's security. This chapter provides a blueprint to ensure that the Department can meet our national security needs. Its preparation was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but Sergio de la Pena and Chuck DeVore deserve special mention. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

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5

DEPARTMENT OF HOMELAND SECURITY

Ken Cuccinelli

PRIMARY RECOMMENDATION

Our primary recommendation is that the President pursue legislation to dismantle the Department of Homeland Security (DHS). After 20 years, it has not gelled into "One DHS." Instead, its various components' different missions have outweighed its decades-long attempt to function as one department, rendering the whole disjointed rather than cohesive. Breaking up the department along its mission lines would facilitate mission focus and provide opportunities to reduce overhead and achieve more limited government. In lieu of a status quo DHS, we recommend that:

- U.S. Customs and Border Protection (CBP) be combined with Immigration and Customs Enforcement (ICE); U.S. Citizenship and Immigration Services (USCIS); the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR); and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) and Office of Immigration Litigation (OIL) into a standalone border and immigration agency at the Cabinet level (more than 100,000 employees, making it the third largest department measured by manpower).

- The Cybersecurity and Infrastructure Security Agency (CISA) be moved to the Department of Transportation.

- The Federal Emergency Management Agency (FEMA) be moved to the Department of the Interior or, if combined with CISA, to the Department of Transportation.
- The U.S. Coast Guard (USCG) be moved to DOJ and, in time of full-scale war (i.e., threatening the homeland), to the Department of Defense (DOD). Alternatively, USCG should be moved to DOD for all purposes.
- The U.S. Secret Service (USSS) be divided in two, with the protective element moved to DOJ and the financial enforcement element moved to the Department of the Treasury.
- The Transportation Security Administration (TSA) be privatized.
- The Science and Technology Directorate (S&T) be moved to DOD and the Office of Countering Weapons of Mass Destruction be moved to the FBI.

All of the remaining supporting components could be dismantled because their functions already exist in the moving components as well as the receiving departments. Cutting these costs would save the American taxpayers significant sums.

Unless and until this dismantling recommendation is pursued and achieved, however, DHS will statutorily continue to exist, and it needs many reforms. Accordingly, we now turn to recommended changes in DHS as it exists now.

MISSION STATEMENT

The Department of Homeland Security protects the American homeland from and prepares for terrorism and other hazards in both the physical and cyber realms, provides for secure and free movement of trade and travel, and enforces U.S. immigration laws impartially.

OVERVIEW

The Department of Homeland Security (DHS) was created in the aftermath of the terrorist attacks of September 11, 2001, and subsequent mailings of anthrax spores. The Homeland Security Act of 2002,[1] which created the department, states that DHS's primary mission is to prevent terrorist attacks within the U.S.; reduce the nation's vulnerability to terrorism; minimize the damage from and assist in the recovery from any terrorist attacks; prepare and respond to natural and manmade crises and emergencies; and monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and interdict illegal drug trafficking.

Unfortunately for our nation, the federal government's newest department became like every other federal agency: bloated, bureaucratic, and expensive. It also lost sight of its mission priorities. DHS has also suffered from the Left's wokeness and weaponization against Americans whom the Left perceives as its political opponents.

To truly secure the homeland, a conservative Administration needs to return the department to the right mission, the right size, and the right budget. This would include reorganizing the department and shifting significant resources away from several supporting components to the essential operational components. Prioritizing border security and immigration enforcement, including detention and deportation, is critical if we are to regain control of the border, repair the historic damage done by the Biden Administration, return to a lawful and orderly immigration system, and protect the homeland from terrorism and public safety threats. This also includes consolidating the pieces of the fragmented immigration system into one agency to fulfill the mission more efficiently.

The Cybersecurity and Infrastructure Security Agency (CISA) is a DHS component that the Left has weaponized to censor speech and affect elections at the expense of securing the cyber domain and critical infrastructure, which are threatened daily.[2] A conservative Administration should return CISA to its statutory and important but narrow mission.

The bloated DHS bureaucracy and budget, along with the wrong priorities, provide real opportunities for a conservative Administration to cut billions in spending and limit government's role in Americans' lives. These opportunities include privatizing TSA screening and the Federal Emergency Management Agency (FEMA) National Flood Insurance Program, reforming FEMA emergency spending to shift the majority of preparedness and response costs to states and localities instead of the federal government, eliminating most of DHS's grant programs, and removing all unions in the department for national security purposes. A successful DHS would:

- Secure and control the border;
- Thoroughly enforce immigration laws;
- Correctly and efficiently adjudicate immigration benefit applications while rejecting fraudulent claims;
- Secure the cyber domain and collaborate with critical infrastructure sectors to maintain their security;
- Provide states and localities with a limited federal emergency response and preparedness;

- Secure our coasts and economic zones;
- Protect political leaders, their families, and visiting heads of state or government; and
- Oversee transportation security.

OFFICE OF THE SECRETARY (SEC)

In the next Administration, the Office of the Secretary should take on the following key issues and challenges to ensure the effective operation of DHS.

Expansion of Dedicated Political Personnel. The Secretary of Homeland Security is a presidentially appointed and Senate-confirmed political appointee, but for budgetary reasons, he or she has historically been unable to fund a dedicated team of political appointees. A key first step for the Secretary to improve front-office functions is to have his or her own dedicated team of political appointees selected and vetted by the Office of Presidential Personnel, which is not reliant on detailees from other parts of the department, to help ensure the completion of the next President's agenda.

An Aggressive Approach to Senate-Confirmed Leadership Positions. While Senate confirmation is a constitutionally necessary requirement for appointing agency leadership, the next Administration may need to take a novel approach to the confirmations process to ensure an adequate and rapid transition. For example, the next Administration arguably should place its nominees for key positions into similar positions as "actings" (for example, putting in a person to serve as the Senior Official Performing the Duties of the Commissioner of CBP while that person is going through the confirmation process to direct ICE or become the Secretary). This approach would both guarantee implementation of the Day One agenda and equip the department for potential emergency situations while still honoring the confirmation requirement. The department should also look to remove lower-level but nevertheless important positions that currently require Senate confirmation from the confirmation requirement, although this effort would require legislation (and might also be mooted in the event of legislation that closes portions of the department that currently have Senate-confirmed leadership).

Clearer, More Durable, and Political-Only Line of Succession. Based on previous experience, the department needs legislation to establish a more durable but politically oriented line of succession for agency decision-making purposes. The ideal sequence for line of succession is certainly debatable, except that in circumstances where a career employee holds a leadership position in the department, that position should be deemed vacant for line-of-succession purposes and the next eligible political appointee in the sequence should assume acting authority. Further,

individuals wielding acting Secretary authority should have *explicit* authority to finalize agency actions, including regulations, to ensure that the department's homeland security mission is fulfilled.

Soft Closure of Unnecessary Offices. Pending a possible presidential decision to shrink or eliminate DHS itself, the next Administration will still have the obligation to protect the homeland as required by law. The Secretary therefore can and should use his or her inherent, discretionary leadership authority to "soft close" ineffective and problematic corners of the department. While those corners are to be determined, the Secretary could shift personnel, funding, and operational responsibility to mission-essential components of the department, including the Office of the Secretary itself. This effort not only would make the department more efficient, but also would support a legislative move to shrink or dismantle the department by showing that the agency can fulfill national security–critical functions without its current bloated bureaucracy.

Restructuring and Redistribution of Career Personnel. To strengthen political decision-making and ensure that taxpayer dollars are being used legally and efficiently, the Secretary should make major changes in the distribution of career personnel throughout the department. For example, personnel from parts of the department undergoing soft closure could be redistributed to what will be workload-intensive corners of the department, including national security–critical and transparency functions. All personnel with law enforcement capacity should be removed immediately from office billets and deployed to field billets to maximize law enforcement capacity.

Compliance for Grants and Other Federal Funding. The next Administration should take steps to restore lawfulness and integrity to the department's massive regimen of federal grant programs, most of which are managed and distributed by the Federal Emergency Management Agency. The Secretary should direct FEMA to ensure that all FEMA-issued grant funding for states, localities, and private organizations is going to recipients who are lawful actors, can demonstrate that they are in compliance with federal law, and can show that their mission and actions support the broader homeland security mission. All applicants and potential recipients of such grant funding should be required to meet certain preconditions for eligibility (except for receipt of post-disaster or nonhumanitarian funding) or should simply be considered ineligible for funding. Such preconditions should include at least the following:

- Certification by applicants that they comply with all aspects of federal immigration laws, including the honoring of all immigration detainers.

- Certification by applicants that they are both registered with E-Verify and using E-Verify in a transparent and nonevasive manner. For states

and localities, that would include certification that *all* components of that government, and not just the applicant agency, are registered with and use E-Verify.

- If the applicant is a state or locality, commitment by that state or locality to total information-sharing in the context of both federal law enforcement and immigration enforcement. This would include access to department of motor vehicles and voter registration databases.

Non-Use of Discretionary Guest Worker Visa Authorities. To stop facilitating the availability of cheap foreign labor in order to support American workers (particularly poor and middle-class American workers) and follow congressional intent, the Secretary should explicitly cease using at least two discretionary authorities as part of his or her broader effort to support American workers.

- The Secretary should make it clear that he or she will not use the Secretary's existing discretionary authority to increase the number of H-2B (seasonal non-agricultural) visas above the statutorily set cap.

- The Secretary should not issue any regulations in support of the "H-2 eligible" country list, the effect of which would prevent favoring certain foreign nationals seeking an H-2 guest worker visa based simply on their nationality.

Restoration of Honesty and Transparency. The Secretary should use his or her inherent authority as leader of the department to follow up with congressional and other partners to disclose information and provide the transparency that has been obstructed during the Biden Administration. The Secretary should proceed from the assumption that congressional inquiries and public information requests were unfulfilled and then seek to fulfill them.

Replacement of the Entire Homeland Security Advisory Committee. The Secretary should plan to quickly remove *all* current members of the Homeland Security Advisory Committee and replace them as quickly as is feasible.

U.S. CUSTOMS AND BORDER PROTECTION (CBP)

If *all* immigration agencies are not merged, including USCIS and ORR, then an appropriate third alternative would be to consolidate ICE and CBP to form a combined Border Security and Immigration Agency (BSIA). This would integrate critical interdiction, enforcement, and investigative resources, enhancing coordination and refocusing collective efforts on the vast and complex cross-border threats impacting our nation's health, safety, and national security. It would

also simultaneously add efficiencies to our nation's capacity to facilitate lawful trade and travel.

The BSIA should establish clear mission requirements, responsibilities, and mandates under existing law regarding the persistent need for and utilization of U.S. military personnel and resources to assist BSIA with increasing whole-of-government efforts and long-term strategy to secure our nation's borders effectively. In addition, appropriate elements within the newly created BSIA should be designated as part of the U.S. National Security and Intelligence Community.

A conservative Administration should eliminate any prohibitive guidance, direction, or mandate from DHS or the Administration that curtails or limits CBP from publishing detailed border security and enforcement data not impacting intelligence, interdiction, and investigative operations, methods, or sources. DHS should issue a regulation mandating that CBP publish accurate and timely border security data, readily available to the public, on a regular basis that avoid White House and DHS leadership review and approval.

The White House should grant the authority for CBP and DHS executives to utilize component aviation assets under the Office of Air and Marine (OAM). CBP and DHS have worldwide missions with personnel and facilities that are deployed across the globe and in every state in the U.S. With a CBP workforce alone of more than 60,000 people (240,000-plus for DHS) encompassing more than a thousand sea, land, and airports, it is essential that the Commissioner, Deputy Commissioner, Secretary, and Deputy Secretary can travel efficiently to facilities to maintain appropriate situational awareness across the department's vast mission set and interact with the expansive workforce. Although CBP operates one of the largest aviation components of any domestic U.S. law enforcement agency, executives are prohibited from utilizing the agency's aviation assets to facilitate official travel. Executives are required to fly on commercial airlines, and this requirement significantly limits their ability to have classified communications and takes them offline for extended periods of time.

Border Patrol (BP) and OAM should be combined within CBP. BP has more than 20,000 personnel, and OAM has approximately 1,800. OAM's assets are dedicated in support of BP operations the vast majority of the time, yet redundant approvals, strategies, and independent hierarchal commands serve as impediments to efficient and practical resource deployments.

CBP should restart and expand use of the horseback-mounted Border Patrol. As part of this announcement, the Secretary should clear the records and personnel files of those who were falsely accused by Secretary Alejandro Mayorkas of whipping migrants and issue a formal apology on behalf of DHS and CBP.

The Secretary should combine the Office of Trade (OT) and Trade Relations with the Office of Field Operations (OFO). The OT is the smallest of CBP's components, and its operational counterpart, OFO, has a workforce of more than 30,000.

OT's function is interwoven with that of its OFO operational counterpart. Combining OT with OFO would achieve streamlined operations and increase OT's capacity and capability by leveraging OFO's expansive resources.

CBP, ICE, and USCIS all have authority to issue Notices to Appear (NTA) to removable aliens in their presence, which begins removal proceedings. In most instances, CBP should turn illegal aliens over to ICE for detention, and ICE can then issue any needed NTA. CBP should issue NTAs only in limited situations for humanitarian reasons, such as medical emergencies. In addition, CBP should eliminate use of Notices to Report (NTR) altogether.

CBP's established national standards of Transport, Escort, Detention, and Search (TEDS) have been widely interpreted and expanded by lower courts. This has resulted in unrealistic and differing detention standards for CBP facilities based on the jurisdiction within which they fall, negatively impacting operations. ICE has suffered similarly. A single nationwide detention standard should be codified that prevents individual states from mandating that federal government agencies adhere to widely expansive and ever-changing sets of standards. Such standards should allow the flexibility to use large numbers of temporary facilities such as tents.

The annual costs associated with establishing and maintaining temporary facilities to address the flow of illegal migration and associated care, transportation, and processing are prohibitive, and CBP's budget is inadequate. CBP is forced to forgo critical mission-essential endeavors to fund the additional associated costs. Often, this requires the reprogramming of funding at the DHS level, which has a negative impact on other DHS components' operations. This predictable cost that has to be paid from existing CBP and DHS funding levels reduces CBP's operational readiness and ability to accomplish its diverse and critical missions to protect the American people. The next President should request a realistic budget that fully pays for these costs.

Increased funding is needed for BP to hire additional support personnel, which would relieve uniformed BP agents from administrative duties associated with processing aliens and allow them to return to their national security mission.

Congress should increase funding for facility upgrades at strategic land Ports of Entry (POEs), including expanding state-of-the-art technology such as Non-Intrusive Inspection equipment. Today, the cartels exploit the aging facilities and lack of adequate technology to smuggle illicit drugs, contraband, and more successfully through our nation's POEs.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

Needed Reforms

Since the formation of DHS, ICE has increasingly been tasked with auxiliary missions that have little or nothing to do with either immigration or customs

enforcement. To return ICE to its primary mission, any new Administration that wishes to restore the rule of law to our immigration enforcement efforts should:

- **Order ICE to stop closing out pending immigration cases and apply the Immigration and Nationality Act (INA) as written by Congress.**[3] The Biden Administration closed out tens of thousands of immigration cases that had already been prepared and were slated for expedited removal processing or hearings before the U.S. Immigration Court. This misguided action constituted an egregious example of lawlessness that allowed thousands of illegal aliens and other immigration violators to go free in the United States.

- **Direct ICE to stop ignoring criminal aliens identified through the 287(g) program.**[4] Ultimately, Congress should prevent ICE from ignoring criminal aliens identified by local law enforcement agencies that are partners in the 287(g) program. However, before congressional action, ICE should be directed to take custody of all aliens with records for felonies, crimes of violence, DUIs, previous removals, and any other crime that is considered a national security or public safety threat as defined under current laws.

- **Eliminate T and U visas.** Victimization should not be a basis for an immigration benefit. If an alien who was a trafficking or crime victim is actively and significantly cooperating with law enforcement as a witness, the S visa is already available and should be used. Pending elimination of the T and U visas, the Secretary should significantly restrict eligibility for each visa to prevent fraud.

- **Issue clear guidance regarding detention and bond for aliens.** Thousands of illegal aliens are allowed to bond out of immigration detention only to disappear into the interior of the United States where many commit crimes and many others disappear, never to be heard from again. This occurs primarily because of poorly worded bond regulations, contradictory bond policy memoranda, and poor practices for managing released aliens and the Alternatives to Detention (ATD) Program, which requires significant reform.

- **Prioritize national security in the Student and Exchange Visitor Program (SEVP).** ICE should end its current cozy deference to educational institutions and remove security risks from the program. This requires working with the Department of State to eliminate or significantly reduce the number of visas issued to foreign students from enemy nations.

Most of the foregoing can be accomplished rapidly and effectively through executive action that is both lawful and appropriate. Additionally, ICE should clarify who is responsible for enforcing its criminal and civil authorities. It should also remove self-imposed limitations on its nationwide jurisdiction.

- **Homeland Security Investigations (HSI) Special Agents in the 1811 series should enforce Title 8 and 18 crimes as the biggest part of their portfolio.** Alien smuggling, trafficking, and cross-border crime as defined under Title 8[5] and Title 18[6] should be the focus of ICE operations.

- **The role of ICE Deportation Officers should be clarified.** ICE Enforcement and Removal Operations (ERO) should be identified as being primarily responsible for enforcing civil immigration regulations, including the civil arrest, detention, and removal of immigration violators *anywhere* in the United States, without warrant where appropriate, subject only to the civil warrant requirements of the INA where appropriate.

- **All ICE memoranda identifying "sensitive zones" where ICE personnel are prohibited from operating should be rescinded.** Rely on the good judgment of officers in the field to avoid inappropriate situations.

- **To maximize the efficient use of its resources, ICE should make full use of existing Expedited Removal (ER) authorities.** The agency has limited the use of ER to eligible aliens apprehended within 100 miles of the border. This is not a statutory requirement.

New Policies

U.S. national security and public safety interests would be well-served if ICE were to be combined with CBP and USCIS, as mentioned above. Additionally, ICE/HSI, along with CBP, should be full participants in the Intelligence Community.

The use of Blackies Warrants should be operationalized within ICE. These civil search warrants are commonly used for worksite enforcement when agents have probable cause that illegal aliens are employed at a business. This would streamline investigations.

Safeguarding Americans will require not just securing the border, but continuous vetting and investigations of many aliens who exploited President Biden's open border for potentially nefarious purposes, including some Afghan evacuees sent directly to the U.S. during America's disastrous withdrawal from Afghanistan.

Budget

- **Congress should mandate and fund additional bed space for alien detainees.** ICE should be funded for a significant increase in detention space, raising the daily available number of beds to 100,000.

- **Congress should fund ICE for at least 20,000 ERO officers and 5,000 Office of the Principal Legal Advisor (OPLA) attorneys.**

U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

U.S. Citizenship and Immigration Services (USCIS) is the agency tasked with administering the legal immigration and certain temporary visa programs.

Needed Reforms

Since January 2021, USCIS's priorities have been misaligned, and this has transformed it into an open-borders agency, ignoring the critical role that it plays in national security, public safety, and safeguarding the integrity of our immigration system. USCIS should be returned to operating as a screening and vetting agency. Regulatory efforts have focused on easing asylum eligibility in a manner that is guaranteed to exacerbate asylum fraud as people surge at the border. Emphasis also has been placed on removing legal barriers to immigration, such as the use of public benefits. These actions violate statutes, erode congressional intent, and provide a significant magnet for continued illegal immigration.

Additionally, USCIS resources have been misappropriated to focus more on creating and expanding large-scale parole and temporary status programs that violate the law and are otherwise contrary to congressional intent instead of focusing on a more secure and efficient process for those who are seeking benefits. The ever-increasing number of applications filed has made it difficult to vet applications adequately for eligibility, fraud, and specific national security and public safety problems.

The Fraud Detection and National Security Directorate (FDNS) is currently a small directorate with assigned officers reporting through the chain of command in the field, and this has led to stovepiping, lack of coordination in national policy, and inconsistencies throughout the agency. To prioritize vetting and fraud detection, FDNS should undergo a structural shift focused on direct reporting from the field to headquarters, reclassification of leadership, and FDNS directives taking precedence over those of other component entities. Correcting the current misalignment of agency priorities and resources should begin with this primary shift in focus to vetting and fraud detection. These actions would reform the agency, returning it to its screening and vetting mission in protecting the homeland.

Other structural changes should include reimplementation of the USCIS denaturalization unit—an effort to maintain integrity in the system by identifying and

prosecuting criminal and civil denaturalization cases, in combination with the Department of Justice, for aliens who obtained citizenship through fraud or other illicit means. Additionally, USCIS should create a criminal enforcement component within the agency to investigate immigration benefits fraud under Title 8 (perhaps requiring additional legislative and regulatory authorities for the officers themselves) and to prosecute cases through Special Assistant U.S. Attorneys (SAUSAs) with substantive knowledge in the field. Particular attention should be given to addressing increasing incidents of forced labor trafficking in temporary work visa programs.

While the Biden regulatory agenda has focused on at least two major rules—the credible fear rule and the public charge rule—USCIS has utilized other policy and internal procedural mechanisms to extend employment authorization to large groups of people who are in the country without legal status. The agency has taken quiet steps to cut corners and lessen adjudicatory standards. During a transition period, a complete audit of agency policies, memoranda, and management directives issued during the Biden Administration should be completed, and rescission documents should be prepared for issuance within the first few days of the incoming Administration. Additionally, regulatory documents should be drafted to review or reverse all regulations promulgated during the Biden Administration.

New Policies

To advance the national interest, the three core immigration agencies—USCIS, ICE, and CBP—should remerge and have immigration elements outside of DHS (such as ORR of HHS) included. The fragmented immigration enforcement framework that developed in the wake of the Homeland Security Act has weakened each agency and should be remediated. Combining these critical agencies would strengthen their capabilities, ensure cooperation, and promote information-sharing. Agency responsibilities and the delineation of authorities, such as inconsistent use of deferred action and issuance of NTAs by each agency, have long been a point of contention that would be addressed much more easily if they were recombined into a single entity.

Alternatively, new policies for USCIS as it currently exists should focus on matters that can be addressed through administrative action.

- The workforce should be realigned and, as necessary, retrained on base eligibility and fraud detection rather than speed in processing.

- Training should be returned to Federal Law Enforcement Training Centers (FLETC), which would underscore the enforcement role of USCIS as a vetting agency, and be rebranded accordingly.

- Management Directives and policies should realign to ensure that the workforce, while adaptable and able to handle the bulk of the USCIS mission, is not allowed to be pulled off mission work to focus on unlawful programs (DACA, mass parole for Afghans, Ukrainians, Venezuelans, etc.), which divert resources away from nuclear family and employment programs.

The regulatory agenda should include the immediate submission of notices of proposed rulemaking for the Trump Administration's public charge rule (including aspects from its original notice of proposed rulemaking), temporary work visa reform, employment authorization reform rules, asylum bars rule, and a third-country transit rule. At a minimum, an enhanced regulatory agenda should include rules strengthening the integrity of the asylum system, parole reform, and U visa reform that prioritizes relief for victims of heinous crimes and ensures that we protect the truest and most deserving victims of crime.

Not all policy changes require formal rulemaking, however, as internal guidance documents are generally exempt under the Administrative Procedure Act (APA).[7] In this subregulatory space, USCIS policy memos and operational guidance should reduce the validity of employment authorization documents and end the COVID flexibilities, including the reliance on biometrics reuse. USCIS should also enforce existing regulations by rejecting incomplete applications and petitions, ensuring both that they are completed before accepted for filing and that FDNS signs off on all approved applications and petitions before approval notices are sent to the alien or petitioner. Other efforts should be focused on adjudication standards returning to nearly 100 percent interview requirements for all appropriate cases.

The incoming Administration should spearhead an immigration legislative agenda focused on creating a merit-based immigration system that rewards high-skilled aliens instead of the current system that favors extended family–based and luck-of-the-draw immigration. To that end, the diversity visa lottery should be repealed, chain migration should be ended while focusing on the nuclear family, and the existing employment visa program should be replaced with a system to award visas only to the "best and brightest."

Internal efforts to limit employment authorization should be matched by congressional action to narrow statutory eligibility to work in the United States and mitigate unfair employment competition for U.S. citizens. The oft-abused H-1B program should be transformed into an elite program through which employers are vying to bring in only the top foreign workers at the highest wages so as not to depress American opportunities. Additionally, Congress should:

- Improve the integrity of the temporary work visa programs;
- Repeal Temporary Protected Status (TPS) designations;

- Permanently authorize and make mandatory E-Verify; and
- End parole abuse by legislating specific parole standards.

USCIS should make it clear that where no court jurisdiction exists, it will not honor court decisions that seek to undermine regulatory and subregulatory efforts. Finally, USCIS still requires access to all relevant national security and law enforcement databases in the same vein as any other agency in the intelligence space. This is a key concept that should be addressed as USCIS is returned to functioning primarily as a vetting agency.

Budget

USCIS is primarily fee-funded, operating on revenue derived by those who are seeking immigration benefits, work permits, and naturalization. The total agency budget requested for fiscal year (FY) 2023, including both fees and a small appropriation, is slightly less than $6 billion.[8] The bulk of funds are derived from application fees through the Immigrant Examinations Fee Account. As a general principle, adjudication of applications and petitions should be paid by applicants, not American taxpayers. It is critical that any changes in the budget, even in the wake of a realigned agency combined with ICE and CBP, should retain a fee-funded model.

Given the Obama and Biden Administrations' lack of will, fees should be increased agencywide to keep in step with inflation and the true cost of the adjudications. The incoming Administration should immediately submit a fee rule that reflects such an increase. Aside from an increase in all fees, the rule should drastically limit the availability for fee waivers and should implement a fee for asylum applications. Additionally, Congress should allow for a 10 percent across-the-board increase in all fees for all fee rules to account for the fact that new fee rules always lag behind budget requirements.

USCIS should strive to increase opportunities for premium processing, a benefit by which applicants can expedite their processing times. While this places time burdens on adjudicators, it provides an opportunity for a significant influx of money into the agency, which is not currently available. While simply raising fees to the necessary levels to make the agency run efficiently would be preferable, without the need for expanded premium processing, this short-term measure should be utilized, particularly if longer-term fee rules are unsuccessful.

At least until USCIS is caught up on all case backlogs, all applicants rejected for any benefit or status adjudication should be required to leave the U.S. immediately. Ordinary process can resume once all case backlogs have been adjudicated.

Finally, USCIS should pause the intake of applications in a benefit category when backlogs in that category become excessive. Once USCIS adjudicators can decrease that caseload to a manageable number, application intake should resume.

Personnel

USCIS should be classified as a national security–sensitive agency, and all of its employees should be classified as holding national security–sensitive positions. Leaks must be investigated and punished as they would be in a national security agency, and the union should be decertified. Any employees who cannot accept that change and cannot conform their behavior to the standards required by such an agency should be separated. USCIS's D.C. personnel presence should be skeletal, and agency employees with operational or security roles should be rotated out to offices throughout the United States. These USCIS employees should live and work in the communities that are most affected by their daily duties and decisions.

NECESSARY BORDER AND IMMIGRATION STATUTORY, REGULATORY, AND ADMINISTRATIVE CHANGES

The current border security crisis was made possible by glaring loopholes in our immigration system. The result was a preventable and predictable historic increase in illegal and inadmissible encounters along our southern border. This pulled limited resources from the front lines of our nation's borders and away from their national security mission, releasing a vast and complex set of threats into our country. To regain our sovereignty, integrity, and security, Congress must pass meaningful legislation to close the current loopholes and prevent future Administrations from exploiting them for political gain or personal ideology.

Legislative Proposals

- **Title 42 authority in Title 8.** Create an authority akin to the Title 42 Public Health authority that has been used during the COVID-19 pandemic to expel illegal aliens across the border immediately when certain non-health conditions are met, such as loss of operational control of the border.

- **Mandatory appropriation for border wall system infrastructure.** The monies appropriated would be used to fund the construction of additional border wall systems, technology, and personnel in strategic locations in accordance with the Border Security Improvement Plan (BSIP).

- **Appropriation for Port of Entry infrastructure.** Border security is not addressed solely by systems in between the ports of entry. POEs require technology and physical upgrades as well as an influx of personnel to meet capacity demands and act as the literal gatekeepers for the country. This is the first line of defense against drug and human smuggling operations.

- **Unaccompanied minors**

  1. Congress should repeal Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),[9] which provides numerous immigration benefits to unaccompanied alien children and only encourages more parents to send their children across the border illegally and unaccompanied. These children too often become trafficking victims, which means that the TVPRA has failed.

  2. If an alternative to repealing Section 235 of the TVPRA is necessary, the section should be amended so that all unaccompanied children, regardless of nationality, may be returned to their home countries in a safe and efficient manner. Currently, the TVPRA allows only children from contiguous countries (Canada and Mexico) to be returned while every other unaccompanied minor must be placed into a lengthy process that usually results in the minor's landing in the custody of an illegal alien family member.

  3. Congress must end the Flores Settlement Agreement by explicitly setting nationwide terms and standards for family and unaccompanied detention and housing. Such standards should focus on meeting human needs and should allow for large-scale use of temporary facilities (for example, tents).

  4. Congress should amend the Homeland Security Act and portions of the TVPRA to move detention of alien children expressly from the Department of Health and Human Services to DHS.

- **Asylum reform**

  1. The standard for a credible fear of persecution should be raised and aligned to the standard for asylum. It should also account specifically for credibility determinations that are a key element of the asylum claim.

  2. Codify former asylum bars and third-country transit rules.

  3. Congress should eliminate the particular social group protected ground as vague and overbroad or, in the alternative, provide a clear definition with parameters that at a minimum codify the holding in *Matter of A-B-* that gang violence and domestic violence are not grounds for asylum.[10]

- **Parole reform.** Congress should end the widespread abuse of parole in contravention of statute and return it to its origins as an extraordinary remedy for very limited purposes.

- **NGOs and processing.** Congress should halt funds given to nongovernmental organizations (NGOs) to process and transport illegal aliens into and throughout the United States. Such funds and infrastructure, including the DHS joint processing centers, should be redirected to secure the border, detain aliens, and provide space for immigration court proceedings.

- **Other pathways for border crossers.** While Congress should use its oversight authority to ensure that Expedited Removal is used to the fullest extent and followed to the letter of the law, other paths for border crossers should be included in a legislative package.

    1. **Migrant protection protocols.** Update the statutory language providing the basis for the Remain in Mexico program as needed to withstand judicial scrutiny and executive inaction.

    2. **Asylum Cooperative Agreements.** While the agreements themselves must be negotiated, Congress should mandate that the executive branch work faithfully to negotiate and execute ACAs and set parameters to ensure that an unwilling executive cannot renege on an existing agreement or abandon the effort.

    3. **Other expedited pathways.** Congress should explicitly permit programs akin to the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) programs.

- **Employment authorization**

    1. Congress should reassert control of employment authorization, which is subject to rampant regulatory abuse, and limit it to certain categories of legal immigrants and non-immigrants.

    2. Congress should also permanently authorize E-Verify and make it mandatory.

- **State and local law enforcement**

1. Congress should unequivocally authorize state and local law enforcement to participate in immigration and border security actions in compliance with *Arizona v. United States*.[11]

2. Congress should require compliance with immigration detainers to the maximum extent consistent with the Tenth Amendment and set financial disincentives for jurisdictions that implement either official or unofficial sanctuary policies.

- **Prosecutorial discretion.** Congress should restrict the authority for prosecutorial discretion to eliminate it as a "catch-all" excuse for limiting immigration enforcement.

- **Mandatory detention.** Congress should eliminate ambiguous discretionary language in Title 8 that aliens "may" be detained and clarify that aliens "shall" be detained. This language, which contrasts with other "shall detain" language in statute, creates unhelpful ambiguity and allows the executive branch to ignore the will of Congress.

Regulations

- **Withdraw Biden Administration regulations and reissue new regulations in the following areas:**

1. Credible Fear/Asylum Jurisdiction for Border Crossers.

2. Public Charge.

- **T-Visa and U-Visa reform.** Unless and until T and U visas are repealed, each program needs to be reformed to ensure that only legitimate victims of trafficking and crimes who are actively providing significant material assistance to law enforcement are eligible for spots in the queue.

- **Repeal TPS designations.**

- **H-1B reform.** Transform the program into an elite mechanism exclusively to bring in the "best and brightest" at the highest wages while simultaneously ensuring that U.S. workers are not being disadvantaged by the program. H-1B is a means only to supplement the U.S. economy and to keep companies competitive, not to depress U.S. labor markets artificially in certain industries.

- **Employment authorization.** Along with the legislative proposal, take regulatory action to limit the classes of aliens eligible for work authorization.

Executive Orders

- **Pathways for border crossers**

    1. Direct the Department of State and the Department of Homeland Security to reinstate Asylum Cooperative Agreements with Northern Triangle Countries immediately.

    2. Recommence negotiations with Mexico to fully implement the Remain in Mexico Protocols.

    3. Reinstate, to the extent possible, expedited pathways with full credible fear/immigration court process (PACR and HARP).

    4. Prohibit the use of Notices to Report, the use of any funds for travel into the interior of the United States, and government flights or transportation for aliens.

    5. Mandate that ICE use all detention space in full compliance with Section 235 of the INA, issue weekly reports on detention capacity, and provide authority for low-level temporary capacity (for example, tents) once permanent space is full.

    6. Eliminate the use of ATD for border crossers except in rare cases and only with the explicit authority of the Secretary.

    7. Prohibit the use of parole except in matters that are certified by the Secretary of Homeland Security as requiring action for humanitarian or significant public benefit reasons, and prohibit the use of parole in any categorical circumstance.

- **Enforcement**

    1. Restrict prosecutorial discretion to eliminate it as a "catch-all" excuse for limiting immigration enforcement.

    2. Mandate the use of E-Verify for anyone doing business with the government.

3. Designate USCIS as Intelligence Community–adjacent, ensuring that it has access to national security and law enforcement databases.

4. Rescind all memoranda limiting enforcement of immigration laws including those identifying sensitive zones.

5. End ICE's widespread use of termination and administrative closure of cases in immigration court.

- **Averting or curtailing a mass migration event**

1. Provide that whenever the Secretary of Homeland Security determines that an actual or anticipated mass migration of aliens en route to or arriving off the coast of the U.S. presents urgent circumstances requiring an immediate federal response, the Secretary may make, subject to the approval of the President, rules and regulations prohibiting in whole or in part the introduction of persons from such countries or places as he or she shall designate in order to avert or curtail such mass migration and for such period of time as is deemed necessary, including through the expulsion of such aliens. Such rule and regulation making shall not be subject to the requirements of the Administrative Procedures Act.

2. Provide that notwithstanding any other provision of law, when the Secretary makes such a determination and then promulgates, subject to the approval of the President, such rules and regulations, the Secretary shall have the authority to waive all legal requirements of Title 8 that the Secretary, in his or her sole discretion, determines are necessary to avert or curtail the mass migration.

Subregulatory Matters

- **USCIS priorities/structural changes**

1. Ensure that focus is returned to vetting, base eligibility of applicants, and fraud detection.

2. Realign the Fraud Detection and National Security Directorate (FDNS) to ensure agencywide consistency on implementation of fraud detection and vetting policies.

3. Review and repeal any internal agency memo that is inconsistent with the priorities described in this chapter.

- **287(g) program.** Issue a memo prohibiting any jurisdiction that applies from being denied access to the program unless good cause is shown.

- **Homeland Security Investigations (HSI) priorities.** Issue Department Management Directive (and ICE companion Directive) to refocus HSI on immigration offenses and criminal offenses typically associated with immigration (for example, human trafficking). All criminal investigative work without a clear nexus to the border or otherwise to Title 8 should be turned over to the appropriate federal agency.

- **Blackie's Warrants.** ICE OPLA, ERO, and HSI should issue a joint internal memo on operationalizing Blackie's Warrants for immediate use on worksite enforcement and other appropriate investigations and operations.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Needed Reforms

FEMA is the lead federal agency in preparing for and responding to disasters, but it is overtasked, overcompensates for the lack of state and local preparedness and response, and is regularly in deep debt. After passage of the 1988 Stafford Act,[12] the number of declared federal disasters rose dramatically as most disaster costs were shifted from states and local governments to the federal government. In addition, state-friendly FEMA regulations, such as a "per capita indicator," failed to maintain the pace of inflation and made it easy to meet disaster declaration thresholds. This combination has left FEMA unprepared in both readiness and funding for the truly catastrophic disasters in which its services are most needed. Reform of FEMA requires a greater emphasis on federalism and state and local preparedness, leaving FEMA to focus on large, widespread disasters.

Under the Stafford Act, FEMA has the authority to adjust the per capita indicator for damages, which creates a threshold under which states and localities are not eligible for public assistance. FEMA should raise the threshold because the per capita indicator has not kept pace with inflation, and this over time has effectively lowered the threshold for public assistance and caused FEMA's resources to be stretched perilously thin. Alternatively, applying a deductible could accomplish a similar outcome while also incentivizing states to take a more proactive role in their own preparedness and response capabilities. In addition, Congress should change the cost-share arrangement so that the federal government covers 25 percent of the costs for small disasters with the cost share reaching a maximum of 75 percent for truly catastrophic disasters.

FEMA is also responsible for the National Flood Insurance Program (NFIP), nearly all of which is issued by the federal government. Washington provides

insurance at prices lower than the actuarially fair rate, thereby subsidizing flood insurance. Then, when flood costs exceed NFIP's revenue, FEMA seeks taxpayer-funded bailouts. Current NFIP debt is $20.5 billion, and in 2017, Congress canceled $16 billion in debt when FEMA reached its borrowing authority limit. These subsidies and bailouts only encourage more development in flood zones, increasing the potential losses to both NFIP and the taxpayer. The NFIP should be wound down and replaced with private insurance starting with the least risky areas currently identified by the program.

Budget Issues

FEMA manages all grants for DHS, and these grants have become pork for states, localities, and special-interest groups. Since 2002, DHS/FEMA have provided more than $56 billion in preparedness grants for state, local, tribal, and territorial governments. For FY 2023, President Biden requested more than $3.5 billion for federal assistance grants.[13] Funds provided under these programs do not provide measurable gains for preparedness or resiliency. Rather, more than any objective needs, political interests appear to direct the flow of nondisaster funds.

The principles of federalism should be upheld; these indicate that states better understand their unique needs and should bear the costs of their particularized programs. FEMA employees in Washington, D.C., should not determine how billions of federal tax dollars should be awarded to train local law enforcement officers in Texas, harden cybersecurity infrastructure in Utah, or supplement migrant shelters in Arizona. DHS should not be in the business of handing out federal tax dollars: These grants should be terminated. Accomplishing this, however, will require action by Members of Congress who repeatedly vote to fund grants for political reasons. The transition should focus on building resilience and return on investment in line with real threats.

Personnel

FEMA currently has four Senate-confirmed positions. Only the Administrator should be confirmed by the Senate; other political leadership need not be confirmed by the Senate. Additionally, FEMA's "springing Cabinet position" should be eliminated, as this creates significant unnecessary challenges to the functioning of the whole of DHS at points in time when coordinated responses are most needed.

CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY (CISA)

Needed Reforms

CISA is supposed to have two key roles: (1) protection of the federal civilian government networks (.gov) while coordinating the execution of national cyber defense and sharing information with non-federal and private-sector partners

and (2) national coordination of critical infrastructure security and resilience. Yet CISA has rapidly expanded its scope into lanes where it does not belong, the most recent and most glaring example being censorship of so-called misinformation and disinformation.

CISA's funding and resources should align narrowly with the foregoing two mission requirements. The component's emergency communications and Chemical Facility Anti-Terrorism Standards (CFATS) roles should be moved to FEMA; its school security functions should be transferred to state homeland security offices; and CISA should refrain from duplicating cybersecurity functions done elsewhere at the Department of Defense, FBI, National Security Agency, and U.S. Secret Service.

Of the utmost urgency is immediately ending CISA's counter-mis/disinformation efforts. The federal government cannot be the arbiter of truth. CISA began this work because of alleged Russian misinformation in the 2016 election, which in fact turned out to be a Clinton campaign "dirty trick." The Intelligence Community, including the NSA or DOD, should counter foreign actors. At the time of this writing, release of the Twitter Files has demonstrated that CISA has devolved into an unconstitutional censoring and election engineering apparatus of the political Left. In any event, the entirety of the CISA Cybersecurity Advisory Committee should be dismissed on Day One.

For election security, CISA should help states and localities assess whether they have good cyber hygiene in their hardware and software in preparation for an election—but nothing more. This is of value to smaller localities, particularly by flagging who is attacking their websites. CISA should not be significantly involved closer to an election. Nor should it participate in messaging or propaganda.

U.S. COAST GUARD (USCG)

Needed Reforms

The U.S. Coast Guard fleet should be sized to the needs of great-power competition, specifically focusing efforts and investment on protecting U.S. waters, all while seeking to find (where feasible) more economical ways to perform USCG missions. The scope of the Coast Guard's mission needs to be focused on protecting U.S. resources and interests in its home waters, specifically its Exclusive Economic Zone (200 miles from shore). USCG's budget should address the growing demand for it to address the increasing threat from the Chinese fishing fleet in home waters as well as narcotics and migrant flows in the Caribbean and Eastern Pacific. Doing this will require reversing years of shortfalls in shipbuilding, maintenance, and upgrades of shore facilities as well as seeking more cost-effective ship and facility designs. In wartime, the USCG supports the Navy, but it has limited capability and capacity to support wartime missions outside home waters.

New Policies

The Coast Guard's mission set should be scaled down to match congressional budgeting in the long term, with any increased funding going to acquisitions based on an updated Fleet Mix Analysis. The current shipbuilding plan is insufficient based on USCG analysis, and the necessary numbers of planned Offshore Patrol Cutters and National Security Cutters are not supported by congressional budgets. The Coast Guard should be required to submit to Congress a long-range shipbuilding plan modeled on the Navy's 30-Year Shipbuilding Plan. Ideally this should become part of the Navy plan in a new comprehensive naval long-range shipbuilding plan to ensure better coherency in the services' requirements.

Outside of home waters, and following the Caribbean and Eastern Pacific, the Coast Guard should prioritize limited resources to the nation's expansive Pacific waters to counter growing Chinese influence and encroachment. Expansion of facilities in American Samoa and basing of cutters there is one clear step in this direction and should be accelerated; looking to free association states (Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands) for enhanced and persistent presence, assuming adequate congressional funding, is another such step.

The Secretary of the Navy should convene a naval board to review and reset requirements for Coast Guard wartime mission support. To inform and validate these updated requirements, the Chief of Naval Operations and the Coast Guard Commandant should execute dedicated annual joint wartime drills focused on USCG's wartime missions in the Pacific (the money for these activities should be allocated from DOD). An interagency maritime coordination office focused on developing and overseeing comprehensive efforts to advance the nation's maritime interests and increase its military and commercial competitiveness should be established.

Given the USCG's history of underfunded missions, if the Coast Guard is to continue to maintain the Arctic mission, money to do so adequately will be required over and above current funding levels. Consideration should be given to shifting the Arctic mission to the Navy. Either way, the Arctic mission should be closely coordinated with our Canadian, Danish, and other allies.

Personnel

USCG is facing recruitment challenges similar to those faced by the military services. The Administration should stop the messaging on wokeness and diversity and focus instead on attracting the best talent for USCG. Simultaneously, consistent with the Department of Defense, USCG should also make a serious effort to re-vet any promotions and hiring that occurred on the Biden Administration's watch while also re-onboarding any USCG personnel who were dismissed from service for refusing to take the COVID-19 "vaccine," with time in service credited

to such returnees. These two steps could be foundational for any improvements in the recruiting process.

U.S. SECRET SERVICE (USSS)

Needed Reforms

The U.S. Secret Service must be the world's best protective agency. Currently, the agency is distracted by its dual mission of protection and financial investigations. The result has been a long series of high-profile embarrassments and security failures, perhaps most notably its allowing of then-Vice President-elect Kamala Harris to be inside the Democratic National Committee office on January 6, 2021, while a pipe bomb was outside. Despite the great size and scope of the January 6 investigation, this high-profile incident of danger to a protectee remains unresolved.

The failures of the USSS protective mission are too numerous to list here. A December 2015 bipartisan report from the House Oversight Committee listed dozens of such incidents as well as needed recommendations for reform.[14] This chapter adopts those findings and recommendations in whole, especially the finding that USSS's dual-mission structure detracts from the agency's protective capabilities.

At the time of that report, USSS agents spent only one-third of their work hours on protection-related activities as opposed to investigative activities. USSS was established initially to investigate counterfeit currency, but its mission has evolved over the decades to prioritize electronic financial crimes. For example, as this chapter was being written, all 15 of the USSS's most wanted individuals were wanted for financial crimes, many of them international in nature.

Notably, the last head of the agency left not for a protection-related job, but to be the Chief Security Officer of social media company SnapChat. This is a pattern that has developed over the years, with agents seeking to burnish their online financial crimes credentials to secure corporate security jobs. Coupled with some of the lowest morale in the federal government, the agency has completely lost sight of the primacy of its protective mission.

New Policies

USSS should transfer to the Department of Justice and Department of the Treasury all investigations that are not related to its protective function. It should begin the logistical operation of closing all field offices throughout the country and internationally to the extent they are not taken over by Treasury or Justice. USSS agents stationed outside of Washington, D.C., should be transferred to work in Immigration and Customs Enforcement field offices where they would continue to be the "boots on the ground" to follow up on threat reports throughout the country and liaise with local law enforcement for visits by protectees.

The only investigations not related to USSS's protective function that agents should pursue would be directed by HSI and relate to tracking the financial crimes associated with illegal immigration. This should include tracing remittances, any funds that are used to pay coyotes or the cartels, and payments by businesses to illegal aliens and all other crimes associated with illegal immigration.

USSS should keep visitor logs for all facilities where the President works or resides. The Biden Administration has evaded such transparency with President Biden spending a historic amount of time for a President at his Delaware residence. This has left the American people in the dark as to who is influencing the highest levels of their own government.

Budget

The suggested reforms would result in a significant USSS budget reduction, primarily because the agency would relinquish dozens of physical offices throughout the U.S. and internationally. Some amount of savings should be used to fix the personnel problems and for recruitment initiatives aimed at individuals who are inclined to join a protection-focused agency.

Personnel

As documented extensively in the above-referenced 2015 bipartisan congressional report, low morale and high turnover are key drivers of USSS problems. With their mission focused on protection, agents would no longer spend the bulk of their time developing unrelated skillsets. Instead, USSS agents could hone their protection skills and pursue a protection career path in the agency rather than quickly leaving USSS for high-paying corporate security jobs.

The Uniform Division (UD) of USSS requires a significant staffing increase. As documented in the bipartisan report, understaffing results in unpredictable and long hours, which in turn result in high turnover, which only compounds the problem.

Another key issue is that UD officers lack the ability to enforce criminal laws outside the immediate vicinity of the White House. As the District of Columbia is a federal jurisdiction and currently is beholden to the trend of progressive pro-crime policies, UD officers should enforce all applicable laws. The result would be to allow UD officers to gain more law enforcement experience—an attractive credential that would improve morale.

TRANSPORTATION SECURITY ADMINISTRATION (TSA)

The TSA model is costly and unwisely makes TSA both the regulator and the regulated organization responsible for screening operations. As part of an effort to shrink federal bureaucracies and bring private-sector know-how to government programs, TSA is ripe for reform. The U.S. should look to the Canadian and

European private models of providing aviation screening manpower to lower TSA costs while maintaining security. Until it is privatized, TSA should be treated as a national security provider, and its workforce should be deunionized immediately.

TSA could privatize the screening function by expanding the current Screening Partnership Program (SPP) to all airports. TSA would turn screening operations over to airports that would choose security contractors that meet TSA regulations and would oversee and test airports for compliance. Alternatively, it could adopt a Canadian-style system, turning over screening operations to a new government corporation that contracts screening service to private contractors. Contractors would bid to provide their services to a set of airports in a particular region, likely with around 10 regions nationally. TSA would continue to set security regulations and test airports for compliance, and the new corporation would establish any operating procedures or customer service standards. With either model, the intelligence function for domestic travel patterns should remain with the U.S. government.

The federal government could expect to save 15 percent–20 percent from the existing aviation screening budget, but savings could be significantly larger. Service to travelers should also improve.

MANAGEMENT DIRECTORATE (MGMT)

The Management Directorate is unnecessarily large because each individual component also maintains its own respective management office. Too much overlap and red tape exist between headquarters (HQ) and components with regard to such functions as hiring, information technology, and procurement. Finance is unique given that HQ needs to address reprogramming, and component budgets need to roll up into all-department budgets. The Directorate requires intense reform, the specifics of which should be further assessed given its expansive nature.

Front Office (FO). Immediately place a small team of advisers with a deep understanding of operational management—but who have some experience in government because they will need to understand the nuance of Reduction in Force (RIF), appropriations hurdles when dealing with U.S. government reorganization, etc.—to sit in the MGMT FO (reporting to the Secretary, ultimately either S1 or S2). One of these advisers should understand U.S. government employment law and be prepared to relocate personnel and downsize offices accordingly. This includes reverting to the original understanding of the function of individuals appointed to the Senior Executive Service: competent managers who can work capably with any subject matter and in any location.

Over the first few months of the Administration, the advisers' role should be to assess what structural and procedural changes are appropriate. They should dissect the current standing Management Directives and the approval processes in place to implement and/or change them; Office of the Chief Human Capital Officer's processes and procedures; hurdles to the Office of Chief Procurement

Officer's procurement of innovative technology; and the facilities plan, including the consolidation into the St. Elizabeth's campus. They should also be prepared to help implement any end to unionization of DHS components in response to an executive order pursuant to 5 U.S.C. 7103.[15]

Office of the Chief Financial Officer (OCFO). DHS responsibilities to work with Congress have been split between the Office of Legislative Affairs (OLA) and OCFO. OLA deals with the authorizing committees on policy issues, and OCFO works with the appropriations committees on budget planning, execution, and reprogramming. This split creates communication and visibility issues within DHS and inconsistency in answers to Congress. This is an issue not only within the HQ model, but also throughout the components. Either appropriations personnel should be moved to OLA and there should be a "dotted line" reporting structure to OCFO, or a policy that OLA personnel must be included on communications to Congress should be implemented.

To avoid "answer shopping" by congressional staff, particularly appropriations staff, all budget communications from the OCFO, including from the CFO him/herself, should first be provided to the Director of OLA to ensure consistency of information, messaging, and answers. This may be deemed awkward given that the OCFO is a Senate-confirmed position, but it is necessary to avoid inaccuracies and inconsistencies in messaging.

Federal Protective Service (FPS). FPS needs federal agents to develop, share, and receive operational information and maintain direct contact with the Secretary in the midst of heightened threats. Before the summer 2020 civil unrest, positioning FPS under MGMT was justified, but given the current climate, they should not be reporting through MGMT. This may be especially problematic if a Management Directorate Under Secretary lacking law enforcement or military experience is in place when a situation like summer 2020 arises. FPS should report to the Secretary as other components (e.g., FLETC) do. This would add little to the Secretary's current burden unless or until civil unrest arises, at which point reporting to the Secretary creates a direct line between the primary DHS decision-maker (S1 or S2) and the FPS Director.

Regarding operational communication, there should be information-sharing mandates (MOAs)—which are applicable under specific circumstances where federal facilities are involved—between FPS and the U.S. Marshals, U.S. Park Police, and FBI. Agreements with U.S. Capitol Police and Supreme Court Police should also be considered, but it is noteworthy that those entities are jurisdictionally outside of the executive branch.

OFFICE OF STRATEGY, POLICY, AND PLANS (PLCY)

Department-Level Reforms. PLCY should perform a complete inventory, analysis, and reevaluation of the department's domestic terrorism lines of effort to ensure that they are consistent with the President's priorities, congressional authorization, and Americans' constitutional rights.

PLCY should likewise do a complete inventory, analysis, and evaluation of any of the department's work, in coordination with social media outlets, to censor or otherwise change or affect Americans' speech. PLCY should comprehensively report on and publish this history in full so that the American people can know the facts. The department should remove all personnel who participated in any of this activity.

The department has significant authority and budget to provide grants for various purposes. This effort is diffused across components and lacks central policy thought and coordination. PLCY should set a departmentwide policy that establishes how granting choices are to be made and is consistent with the President's priorities. PLCY should clear all granting decisions to ensure that they are consistent with the new policy.

PLCY-Wide Reforms. PLCY should work with Congress to streamline the department's reporting requirements. Because there has not been a departmental reauthorization bill and these requirements have been added piecemeal over two decades, they significantly overlap and even conflict—wasting resources and distracting from the department's mission. PLCY should seek the elimination of the Quadrennial Homeland Security Review.

Issue-Area Reforms. PLCY should bolster its Immigration Statistics program and make it the one-stop shop for the timely production of all department immigration statistics and analysis.

OFFICE OF INTELLIGENCE AND ANALYSIS (I&A)

The Office of Intelligence and Analysis should be eliminated both because it has not added value and because it has been weaponized for domestic political purposes.

The Intelligence Community (IC) already provides raw intelligence to DHS components. In addition, the FBI, National Counter Terrorism Center, and other agencies where necessary already provide holistic threat assessment products to federal, state, local, tribal, and territorial governments as well as to private-sector entities at both the classified and unclassified levels where appropriate. I&A's work as an interlocuter between the IC and DHS components' individual intelligence operations on the one hand and government and the private sector on the other, as well as between the IC and the components, is at best duplicative. At worst, it is used and discussed in the media as a political tool, resulting in more harm than good to the U.S. government and IC writ large.

The Cybersecurity and Infrastructure Security Agency, which is not a member of the IC, should create cyber intelligence products in a collaborative fashion with the National Security Agency and U.S. Cyber Command. Such efforts would lead to timelier usable classified and unclassified products for stakeholders that exceed the quality and capability of I&A's efforts. This same principle applies to other

components as well: CBP, TSA, etc. all have their own intelligence operations and are better situated with their subject-matter experts to make their own assessments.

The National Operations Center (NOC) within the Office of Operations Coordination (OPS) should absorb those select I&A functions and tactically proficient personnel that need to be maintained (for example, technical support to the National Vetting Center). The remainder of I&A should be eliminated. The OPS entity should maintain IC status, and the only intelligence mission set should be to provide situational awareness and the dissemination of operational information or raw intelligence (no analysis or products) at classified and unclassified levels to executive leadership across the department, not outside of DHS.

OFFICE OF THE GENERAL COUNSEL (OGC)

Needed Reforms

OGC should advise principals as to how DHS can execute its missions within the law instead of advising principals as to why they cannot execute regulations, policies, and programs.

Instead of each component's chief counsel reporting to the Headquarters General Counsel (with a solid line) and indirectly to his or her component head (with a dotted line), the accountability should be reversed. Due to the different missions throughout the department, the components can better manage the legal issues of their specific mission than headquarters can. Thus, the chief counsel (or equivalent) of each component should report directly to the component head, report indirectly to the DHS General Counsel, and be accountable to the component head. The report to the General Counsel is to ensure consistency of advice across DHS.

OGC should hire significantly more Schedule C/political appointees who in turn supervise career staff and manage their output. DHS's mission is politically charged, and the legal function cannot be allowed to thwart the Administration's agenda by providing stilted or erroneous legal positions and decision-making.

OGC should serve as the center of the response to the legal challenges facing the department to ensure a streamlined, consistent response to a litany of issues facing the department. It is important to ensure consistency across all potential legal positions taken by the department, including those arising in litigation, congressional oversight, and inquiries received from the Inspector General, U.S. Government Accountability Office (GAO), and Congressional Research Service and pursuant to the Freedom of Information Act.

OGC should invest in e-discovery software and contract with a vendor to manage the department's e-discovery. This would be beneficial both in litigation and in responding to congressional oversight. Removing delays in e-discovery processing would also reduce the issuance of subpoenas to the department and the generation of negative press for the Administration that comes from delayed responses.

The old practice of relying on Executive Secretary taskings to pull documents for congressional requests does not work: It is slow, the metrics for what documents are gathered and how are unclear, and the components do not gather responsive material in an efficient manner. Document gathering should come from the Office of the Chief Information Officer or a relevant technological element within the department that can pull responsive communications quickly.

OFFICE OF LEGISLATIVE AFFAIRS (OLA); OFFICE OF PUBLIC AFFAIRS (OPA); AND OFFICE OF PARTNERSHIP AND ENGAGEMENT (OPE)

DHS's external communications function should be consolidated and reformed so that the President's agenda can be implemented more effectively. The Office of Partnership and Engagement should be merged into the Office of Public Affairs. In many Cabinet agencies, outreach to companies and partner organizations is similarly performed by the Office of Public Affairs. This would also accomplish a needed DHS organizational and management reform to decrease the number of direct reports to the Secretary.

Both public and legislative affairs staff in the components should report directly to their respective headquarters equivalent. This would help to avoid a failure by the department to speak with one voice. It would also allow the component staff to perform more efficiently, overseen by expert managers in their trade. This would also allow DHS to respond to crises effectively by shifting staff as needed to the most pressing issues and better use underutilized staff at less active components.

Only political appointees in OLA should interact directly with congressional staff on all inquiries, including budget and appropriations matters. To prevent congressional staff from answer shopping among HQ OLA, the DHS OCFO, and components, DHS legislative affairs appropriations staff should be moved from MGMT OCFO into OLA. Regarding components, budget/appropriations staff should move from component budget offices into component legislative affairs offices.

Because dozens of congressional committees and subcommittees either have or claim to have jurisdiction over some DHS function, DHS staff from the Secretary on down spend so much time responding to congressional hearing and briefing requests, letters, and questions for the record that they are left with little time to do their assigned job of protecting the homeland. The next President should reach an agreement with congressional leadership to limit committee jurisdiction to one authorizing committee and one appropriations committee in each chamber. If congressional leadership will not limit their committees' jurisdiction over DHS, DHS should identify one authorizing and appropriations committee in each chamber and answer only to it.

To focus more precisely on the DHS mission, OLA staff should also identify outdated and needless congressional reporting requirements and notify Congress

that DHS will cease reporting on such matters. For other congressional reports, OLA should implement a sunset date so that Congress must regularly demonstrate the need for specific data.

In both OPA and OLA, a change in mission and culture is needed. The clients of both components are the President and the Secretary, not the media, external organizations, or Congress. OPA and OLA should change from being compliance correspondents for outside entities airing grievances to serving as messengers and advocates for the President and the Secretary.

OFFICE OF OPERATIONS COORDINATION (OPS)

OPS was originally conceived by then-Secretary Jeh Johnson as an entity tasked with coordinating cross-DHS assets on an as-needed basis using a joint operations approach. This role is particularly challenging because of the disparate nature of mission sets across DHS.

OPS should absorb a very small number of tactical intelligence professionals from I&A as the rest of I&A is shut down. Such intelligence officers would be a subordinate element within OPS placed within the National Operations Center. The intelligence officers would provide tactical intelligence support for upcoming or ongoing operations in addition to liaising with their agency/component counterparts. There would be no strategic intelligence analysis done as part of OPS or its new I&A sub-element.

In addition to facilitating all-of-DHS coordination on a task-by-task basis, OPS would be responsible for ongoing situational awareness for the Secretary and Deputy Secretary.

In addition to long-term staffing, OPS would have cycling billets from each of the major agencies and components to facilitate its most effective working relationships across DHS.

OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES (CRCL) AND PRIVACY OFFICE (PRIV)

The Homeland Security Act established only an Officer of CRCL, not an office. The only substantive function Congress then assigned to the officer was to review and assess information alleging abuses of civil rights. Since then, Congress and CRCL itself have significantly expanded CRCL's scope and size well beyond its original intent or helpful purpose. CRCL now operates and views itself as a quasi-DHS Office of Inspector General. This results in a considerable waste of limited component resources, which are routinely tasked to address redundant, overly burdensome, and uninformed demands from CRCL. It is therefore important to recalibrate CRCL's scope and reach.

The organizational structure of both CRCL and the Privacy Office should be changed to ensure proper alignment with the department's mission. The Office of General Counsel should absorb both CRCL's and PRIV's necessary functions

and staff. Although the CRCL Officer and the Freedom of Information Act (FOIA) Officer/Privacy Officer are statutory, their offices are not mandatory. CRCL and PRIV Officers and employees should report to a Deputy General Counsel, who would be a political appointee.

The CRCL Officer should focus on equal employment opportunity (EEO) compliance and the civil liberties function and investigate matters only within Headquarters or support components. Operational components' civil liberties officers should investigate incidents regarding their own agencies. The CRCL Officer should ensure that all civil liberties or civil rights complaints are sent to the Office of Inspector General (OIG) for review. If the OIG chooses not to investigate, the CRCL Officer should only provide supportive information on possible courses of action for complainants.

The PRIV Officer and FOIA Officer should focus on FOIA, Privacy Compliance Policy, and Privacy Incident Response. The Deputy General Counsel should provide guidance to DHS leadership regarding Privacy Compliance and Privacy Incident Response. To ensure that only U.S. persons and Lawful Permanent Residents are provided protections as required by the Privacy Act, all DHS issuances should be updated to reflect that DHS protects the privacy of individuals as required by the Privacy Act (U.S. persons and lawful permanent residents);[16] the Judicial Redress Act of 2015;[17] and any U.S.–European Union Data Protection and Privacy Agreement.

Because of the lack of public trust in the Office of Intelligence and Analysis, CRCL and PRIV staff should no longer review intelligence products or provide guidance on any intelligence products or reports.

A consistent, clear, and singular message is necessary for DHS's mission. Therefore, all communications and/or meetings with any federal, state, local, or nongovernment groups should be limited to the Deputy General Counsel. In addition, given the narrower scope of work, OGC should disband the outside advisory boards and the more than 50 working groups in which CRCL and PRIV currently participate. Finally, CRCL and PRIV should no longer issue bulletins or periodicals.

OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN (OIDO) AND OFFICE OF THE CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN (CISOMB)

OIDO. The Office of the Immigration Detention Ombudsman should be eliminated. This requires a statutory change in Section 106 of the Consolidated Appropriations Act of 2020.[18]

OIDO was designed to create another impediment to detention through an additional layer of so-called oversight. Several agencies already perform detention oversight. ICE conducts internal audits of facilities and investigates complaints against ICE agents through the Office of Professional Responsibility. Similarly, CBP accepts individual complaints regarding facilities through the Joint Intake Center

and manages complaints against agents through the OPR. In addition, CRCL, OIG, GAO, and Congress all perform detention oversight. These multiple bodies place unmanageable and unreasonable burdens on ICE to manage several sometimes inconsistent audits/inspections at the same time.

If OIDO remains a DHS component, the Secretary should immediately issue a directive stripping CRCL of its immigration portfolio. OIDO is in a better position with dedicated resources and immigration experts to perform this function than CRCL is. Allowing both offices to conduct detention oversight is duplicative and wasteful.

The Secretary should conduct a thorough review of the effectiveness of Directive 0810.1,[19] which is widely interpreted as requiring a wholesale referral of cases to OIG. In reality, OIG investigates only a small fraction of them and often sits on cases for longer than the five-day window specified in the directive. Meanwhile, the other agencies wait in limbo to execute their duties.

CISOMB. The Office of the Citizenship and Immigration Services Ombudsman should be eliminated. The DHS bureaucracy is too large, and the Secretary has too many direct reports. CISOMB's policy functions can be performed (and sometimes already are) by OIG and GAO. The specialized case work can be moved into USCIS as a special unit, much like the IRS Taxpayer Advocate. This would require a statutory change to Section 452 of the Homeland Security Act of 2002.[20]

If CISOMB continues as a DHS component, a policy should be issued that prohibits CISOMB from assisting illegal aliens to obtain benefits. Currently, approximately 15 percent–20 percent of CISOMB's workload consists of helping DACA applicants obtain and renew benefits, including work authorization. This is not the role of an ombudsman. In addition, the government should be a neutral adjudicator, not an advocate for illegal aliens.

AGENCY RELATIONSHIPS

It is critical to the achievement of the President's policy objectives that all agencies and departments touching immigration policy work in sync with one another. While there are numerous areas in which such cooperation is critical, immigration has proven to be the most difficult. Accordingly, several objectives will be necessary for each of the following departments.

- **Department of Health and Human Services:** Agree to move the Office of Refugee Resettlement (ORR) to DHS or, alternatively, implement an aggressive and regular effort by the Secretary of HHS to ensure that ORR is fully pursuing presidential objectives in support of DHS.

- **Department of Defense:** Assist in aggressively building the border wall system on America's southern border. Additionally, explicitly acknowledge and adjust personnel and priorities to participate actively in the defense

of America's borders, including using military personnel and hardware to prevent illegal crossings between ports of entry and channel all cross-border traffic to legal ports of entry.

- **Department of Justice:** Agree to move the Executive Office for Immigration Review and the Office of Immigration Litigation to DHS and/or, alternatively, to treat the administrative law judges (immigration judges and Board of Immigration Appeals) as national security personnel, decertify their union, and move to increase hiring significantly to enable the processing of more immigration cases.

- **Department of State:** Allow DHS to lead international engagement in the Western Hemisphere on issues of security and migration. Additionally, quickly and aggressively address recalcitrant countries' failure to accept deportees by imposing stiff sanctions until deportees are in fact accepted for return (not just promised to be taken).

- **Department of Housing and Urban Development:** Ensure that only U.S. citizens and lawful permanent residents utilize or occupy federally subsidized housing.

- **Department of Education:** Deny loan access to those who are not U.S. citizens or lawful permanent residents, and deny loan access to students at schools that provide in-state tuition to illegal aliens.

- **Department of Labor:** Eliminate the two (of four) lowest wage levels for foreign workers.

- **Department of the Treasury:** Implement all necessary regulations both to equalize taxes between American citizens and working visa holders and to provide DHS with all tax information of illegal aliens as expeditiously as possible.

- **Intelligence Community:** Cooperate in the shrinking or elimination of the I&A role in the IC while replacing it with CBP and HSI representation to the IC.

AUTHOR'S NOTE: I had the honor of coordinating the efforts of the experts listed as contributors to this book, nearly all of whom have spent more time inside or interacting with the Department of Homeland Security than myself. I wrote only a small portion of the chapter and relied on the contributors' experience and expertise to give the chapter both its depth and policy impact. No views expressed herein should be attributed to any single contributor.

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6

DEPARTMENT OF STATE

Kiron K. Skinner

The U.S. Department of State's mission is to bilaterally, multilaterally, and regionally implement the President's foreign policy priorities; to serve U.S. citizens abroad; and to advance the economic, foreign policy, and national security interests of the United States.

Since the U.S. Founding, the Department of State has been the American government's designated tool of engagement with foreign governments and peoples throughout the world. Country names, borders, leaders, technology, and people have changed in the more than two centuries since the Founding, but the basics of diplomacy remain the same. Although the Department has also evolved throughout the years, at least in the modern era, there is one significant problem that the next President must address to be successful.

There are scores of fine diplomats who serve the President's agenda, often helping to shape and interpret that agenda. At the same time, however, in all Administrations, there is a tug-of-war between Presidents and bureaucracies—and that resistance is much starker under conservative Presidents, due largely to the fact that large swaths of the State Department's workforce are left-wing and predisposed to disagree with a conservative President's policy agenda and vision.

It should not and cannot be this way: The American people need and deserve a diplomatic machine fully focused on the national interest as defined through the election of a President who sets the domestic and international agenda for the nation. The next Administration must take swift and decisive steps to reforge the department into a lean and functional diplomatic machine that serves the

President and, thereby, the American people. Below is the basic but essential roadmap for achieving these repairs.

HISTORY AND CONTEXT

Founded in 1789, the Department of State was one of the first Cabinet-level agencies in the new American government. The first Secretary of State, Thomas Jefferson, oversaw a small staff, diplomatic posts in London and Paris, and 10 consular posts.[1] Today, the Department of State has almost 80,000 total employees (including 13,517 foreign service employees and 11,683 civil service employees) in 275 embassies, consulates, and other posts around the world.[2]

In theory, the State Department is the principal agency responsible for carrying out the President's foreign policy and representing the United States in other nations and international organizations. To the extent consistent with presidential policy and federal law, the department also supports U.S. citizens and businesses in other nations and vets foreign nationals seeking temporary or permanent entrance to the United States. The State Department also provides humanitarian, security, and other assistance to non-U.S. populations in need, and otherwise advances and supports U.S. national interests abroad. Properly led, the State Department can be instrumental for communicating and implementing a foreign policy vision that best serves American citizens.

As the U.S. Commission on National Security/21st Century (the Hart–Rudman Commission) observed more than 20 years ago, the State Department is a "crippled institution" suffering from "an ineffective organizational structure in which regional and functional policies do not serve integrated goals, and in which sound management, accountability, and leadership are lacking."[3] Unfortunately, this critique remains accurate.

The State Department's failures are not due to a lack of resources. As one expert has observed, the department "has significantly more at its disposal than was the case at the end of the Cold War, in the mid-1990s, and at the height of the Iraq and Afghanistan wars."[4] A major source, if not *the* major source, of the State Department's ineffectiveness lies in its institutional belief that it is an independent institution that knows what is best for the United States, sets its own foreign policy, and does not need direction from an elected President.

The next President can make the State Department more effective by providing a clear foreign policy vision, selecting political officials and career diplomats that will enthusiastically turn that vision into a policy agenda, and firmly supporting the State Department as it makes the necessary institutional adjustments.

POLITICAL LEADERSHIP AND BUREAUCRATIC LEADERSHIP AND SUPPORT

Focusing the State Department on the needs and goals of the next President will require the President's handpicked political leadership—as well as foreign

service and civil service personnel who share the President's vision and policy agendas—to run the department. This can be done by taking these steps at the outset of the next Administration.

Exert Leverage During the Confirmation Process. Notwithstanding the challenges and slowness of the modern U.S. Senate confirmation process, the next President can exert leverage on the Senate if he or she is willing to place State Department appointees directly into those roles, pending confirmation. Doing so would both ensure that the department has immediate senior political leadership and would force the Senate to act on nominees' appointments instead of being allowed to engage in dilatory tactics that cripple the State Department's functionality for weeks, months, or even years.

Assert Leadership in the Appointment Process. The next Administration should assert leadership over, and guidance to, the State Department by placing political appointees in positions that do not require Senate confirmation, including senior advisors, Principal Deputy Assistant Secretaries, and Deputy Assistant Secretaries. Given the department's size, the next Administration should also increase the number of political appointees to manage it.

To the extent possible, all non-confirmed senior appointees should be selected by the President-elect's transition team or the new President's Office of Presidential Personnel (depending on the timing of selection) and be in place the first day of the Administration. No one in a leadership position on the morning of January 20 should hold that position at the end of the day. These recommendations do not imply that foreign service and civil service officials should be excluded from key roles: It is hard to imagine a scenario in which they are not immediately relevant to the transition of power. The main suggestion here is that as many political appointees as possible should be in place at the start of a new Administration.

Support and Train Political Appointees. The Secretary of State should use his or her office and its resources to ensure regular coordination among all political appointees, which should take the form of strategy meetings, trainings, and other events. The secretary should also take reasonable steps to ensure that the State Department's political appointees are connected to other departments' political appointees, which is critical for cross-agency effectiveness and morale. The secretary should capitalize on the more experienced political appointees by using them as the foundation for a mentorship program for less experienced political appointees. The interaction of political appointees must be routine and operational rather than incidental or occasional, and it must be treated as a crucial dimension for the next Administration's success.

Maximize the Value of Career Officials. Career foreign service and civil service personnel can and must be leveraged for their expertise and commitment to the President's mission. Indeed, the State Department has thousands of employees with unparalleled linguistic, cultural, policy, and administrative skills,

and large numbers of them have been an enormous resource to the Secretaries of State under which they have served. The secretary must find a way to make clear to career officials that despite prior history and modes of operation, they need not be adversaries of a conservative President, Secretary of State, or the team of political appointees.

Reboot Ambassadors Worldwide. All ambassadors are required to submit letters of resignation at the start of a new Administration. Previous Republican Administrations have accepted the resignations of only the political ambassadors and allowed the foreign service ambassadors to retain their posts, sometimes for months or years into a new Administration.[5] The next Administration must go further: It should both accept the resignations of all political ambassadors and quickly review and reassess all career ambassadors. This review should commence well before the new Administration's first day.

Ambassadors in countries where U.S. policy or posture would substantially change under the new Administration, as well as any who have evinced hostility toward the incoming Administration or its agenda, should be recalled immediately. The priority should be to put in place new ambassadors who support the President's agenda among political appointees, foreign service officers, and civil service personnel, with no predetermined percentage among these categories. Political ambassadors with strong personal relationships with the President should be prioritized for key strategic posts such as Australia, Japan, the United Kingdom, the United Nations, and the North Atlantic Treaty Organization (NATO).

RIGHTING THE SHIP

Ensuring the State Department is accountable for serving American citizens first will require—at a minimum—that the following steps be implemented immediately:

Review Retroactively. Before inauguration, the President-elect's department transition team should assess every aspect of State Department negotiations and funding commitments. Upon inauguration, the Secretary of State should order an immediate freeze on *all* efforts to implement unratified treaties and international agreements, allocation of resources, foreign assistance disbursements, domestic and international contracts and payments, hiring and recruiting decisions, etc., pending a political appointee-driven review to ensure that such efforts comport with the new Administration's policies. The quality of this review is more important than speed. The posture of the department during this review should be an unwavering desire to prioritize the American people—including a recognition that the federal government must be a diligent steward of taxpayer dollars.

Implement Repair. The State Department must change its handling of international agreements to restore constitutional governance. Under prior Administrations, unnecessary institutional factors in the department caused

numerous logistical challenges in negotiating, approving, and implementing treaties and agreements. This is particularly true under the Biden Administration. For example, under the Biden Administration, the State Department was considered sufficiently unreliable in terms of alignment and effectiveness such that its political leadership invoked its Circular 175 (C-175) authority to delegate its diplomatic capacity to other agencies such as the Department of Homeland Security.

At time of publication, the State Department is negotiating (or seeking to negotiate) large-scale, sovereignty-eroding agreements that could come at considerable economic and other costs to the American people. Although such agreements should be evaluated and approved as are treaties, the Biden Administration is likely to simply call them "agreements." The Biden State Department not only approves but also enforces treaties that have not been ratified by the U.S. Senate. This practice must be thoroughly reviewed—and most likely jettisoned.

The next President should recalibrate how the State Department handles treaties and agreements, primarily by restoring constitutionality to these processes. He or she should direct the Secretary of State to freeze any ongoing treaty or international agreement negotiations and assess whether those efforts align with the new President's foreign policy direction. The next Administration should also direct the secretary to order an immediate stand-down on enforcement of any treaties that have not been ratified by the Senate, and order a thorough review of the degree to which such enforcement has impacted the department's functions, policies, and use of resources.

The Secretary of State, in cooperation with the Office of the Attorney General and the White House Counsel's Office, should also conduct a review to identify "agreements" that are really treaty commitments within the ordinary public meaning of the Constitution,[6] and suspend compliance pending presidential transmittal of those agreements to the Senate for advice and consent. The next Administration should also move to withdraw from treaties that have been under Senate consideration for 20 years or more, with the understanding that those treaties are unlikely to be ratified. Under circumstances in which ratification of a stale treaty before the Senate still serves national interests, the treaty letter of transmittal and submission should be updated for current circumstances. The Secretary of State must revoke most outstanding C-175 authorities that have been granted to other agencies during previous Administrations, although such revocations should be closely coordinated with the White House for logistical reasons.

Coordinate with Other Agencies. Interagency engagement in this new environment must be similarly adjusted to mirror presidential direction. Indeed, coordination among federal agencies is challenging even in the most well-oiled Administrations. Although such coordination is inescapable and sometimes productive, agencies tend to leverage each other's resources in ways that occasionally have off-mission consequences for the agency or agencies with the resources. Ideally, the

Secretary of State should work as part of an agile foreign policy team along with the National Security Advisor, the Secretary of Defense, and other agency heads to flesh out and advance the President's foreign policy. Bureaucratic stovepipes of the past should be less important than commitment to, and achievement of, the President's foreign policy agenda. The State Department's role in these interagency discussions must reflect the President's clear direction and disallow resources and tools to be used in any way that detracts from the presidentially directed mission.

Coordinate with Congress. Congress has both the statutory and appropriations authority to impact the State Department's operations and has a strong interest in key aspects of American foreign policy. The department must therefore take particular care in its interaction with Congress, since poor interactions with Congress, regardless of intentions, could trigger congressional pushback or have other negative impacts on the President's agenda.

This will require particularly strong leadership of the Department of State's Bureau of Legislative Affairs. The Secretary of State and political leadership should ensure full coordination with the White House regarding congressional engagement on any State Department responsibility. This may lead to, for example, the President authorizing the State Department to engage with Members of Congress and relevant committees on certain issues (including statutorily designated congressional consultations), but to remain "radio silent" on volatile or designated issues on which the White House wants to be the primary or only voice. All such authorized department engagements with Congress must be driven and handled by political appointees in conjunction with career officials who have the relevant expertise and are willing to work in concert with the President's political appointees on particularly sensitive matters.

Respond Vigorously to the Chinese Threat. The State Department recently opened the Office of China Coordination, or "China House." This office is intended to bring together experts inside and outside the State Department to coordinate U.S. government relations with China "and advance our vision for an open, inclusive international system."[7] Whether China House will streamline U.S. government communication, consensus, and action on China policy—given the presence of other agencies with strong competing or adverse interests—remains to be seen. The unit is dependent on adequate and competent staff being assigned by other bureaus within the State Department.

Nonetheless, the concept is one a Republican Administration should support *mutatis mutandis*. The Chinese Communist Party (CCP) has been "at war" with the U.S. for decades. Now that this reality has been accepted throughout the government, the State Department must be prepared to lead the U.S. diplomatic effort accordingly. The centralization of efforts in one place is critical to this end.

Review Immigration and Domestic Security Requirements. Arguably, the department's most noteworthy challenge on the global stage has been its handling

of immigration and domestic security issues, which are inextricably related. The State Department's apparent posture toward these two issues, which are of paramount importance to the American people, has historically been that they are of lesser importance than other issues and that they can be treated as concessions in broader diplomatic engagements. In other instances in which access to the U.S. in the form of immigrant (permanent) and nonimmigrant (temporary) visas could potentially serve as diplomatic leverage, it is almost never used. To some degree, the State Department and many of its personnel appear to view the U.S. immigration system less as a tool for strengthening the United States and more as a global welfare program.

To ensure the safety, security, and prosperity of all Americans, this must change. Below are several key areas in which the department's formal and informal postures must adjust to reflect the current immigration and domestic security environment:

- **Visa reciprocity.** The United States should strictly enforce the doctrine of reciprocity when issuing visas to all foreign nationals. For too long, the U.S. has provided virtually unfettered access to foreign nationals from countries that do not respond in kind—including countries that are actively hostile to U.S. interests and nationals. Mandatory reciprocity will convey the necessary reality that other countries do not have an unfettered right to U.S. access and must reciprocally offer favorable visa-based access to U.S. nationals. The State Department's reaction time to other countries' changes in visa policies with respect to the U.S. must be streamlined to ensure it can be updated in real time.

- **Section 243(d) visa sanctions.** Visa sanctions under section 243(d) of the Immigration and Nationality Act (INA),[8] enacted into law to motivate countries to accept the return of any nationals who have been ordered removed from the U.S., should be quickly and fully enforced. Recalcitrant countries that do not accept receipt of their returned nationals will risk the suspension of issuance of *all* immigrant visas, *all* nonimmigrant visas, or *all* visas. These country-specific sanctions should remain in place until the sanctioned country accepts the return of all its removal-pending nationals and formally commits to future, regular acceptance of its nationals. Black-letter implementation of this law will demonstrate a heretofore lacking seriousness to the international community that other nations must respect U.S. immigration laws and work with federal authorities to accept returning nationals—or lose access to the United States.

- **Rightsizing refugee admissions.** The Biden Administration has engineered what is nothing short of a collapse of U.S. border security and

interior immigration enforcement. This Administration's humanitarian crisis—which is arguably the greatest humanitarian crisis in the modern era, one which has harmed Americans and foreign nationals alike—will take many years and billions of dollars to fully address. One casualty of the Biden Administration's behavior will be the current form of the U.S. Refugee Admission Program (USRAP).

The federal government's obligation to shift national security–essential screening and vetting resources to the forged border crisis will necessitate an indefinite curtailment of the number of USRAP refugee admissions. The State Department's Bureau of Population, Refugees, and Migration, which administers USRAP, must shift its resources to challenges stemming from the current immigration situation until the crisis can be contained and refugee-focused screening and vetting capacity can reasonably be restored.

- **Strengthening bilateral and multilateral immigration-focused agreements.** Restoration of both domestic security and the integrity of the U.S. immigration system should start with rapid reactivation of several key initiatives in effect at the conclusion of the Trump Administration. Reimplementation of the Remain in Mexico policy, safe third-country agreements, and other measures to address the influx of non-Mexican asylum applicants at the United States–Mexico border must be Day One priorities. Although the State Department must rein in the C-175 authorities of other agencies, the Department of Homeland Security should retain (or regain) C-175 authorities for negotiating bilateral and multilateral security agreements.

- **Evaluation of national security–vulnerable visa programs.** To protect the American people, the State Department, in coordination with the White House and other security-focused agencies, should evaluate several key security-sensitive visa programs that it manages. Key programs include, but should not be limited to, the Diversity Visa program, the F (student) visa program, and J (exchange visitor) visa program. The State Department's evaluation must ensure that these programs are not only consistent with White House immigration policy, but also align with its national security obligations and resource limitations.

PIVOTING ABROAD

Personnel and management adjustments are crucial preludes to refocus the State Department's mission, which is implementing the President's foreign policy agenda and, in so doing, ensuring that the interests of American citizens are given

priority. That said, the next President must significantly reorient the U.S. government's posture toward friends and adversaries alike—which will include much more honest assessments about who are friends and who are not. This reorientation could represent the most significant shift in core foreign policy principles and corresponding action since the end of the Cold War.

Although not every country or issue area can be discussed in this chapter, below are examples of several areas in which a shift in U. S. foreign policy is not only important, but arguably existential. The point is not to assert that everyone in the evolving conservative movement, or, in some cases, the growing bipartisan consensus, will agree with the details of this assessment. Rather, what is presented below demonstrates the urgency of these issues and provides a general roadmap for analysis.

In a world on fire, a handful of nations require heightened attention. Some represent existential threats to the safety and security of the American people; others threaten to hurt the U.S. economy; and others are wild cards, whose full threat scope is unknown but nevertheless unsettling. The five countries on which the next Administration should focus its attention and energy are China, Iran, Venezuela, Russia, and North Korea.

The People's Republic of China

The designs of the People's Republic of China (PRC) and the Chinese Communist Party, which runs the PRC, are serious and dangerous.[9] This tyrannical country with a population of more than 1 billion people has the vision, resources, and patience to achieve its objectives. Protecting the United States from the PRC's designs requires an unambiguous offensive-defensive mix, including protecting American citizens and their interests, as well as U.S. allies, from PRC attacks and abuse that undermine U.S. competitiveness, security, and prosperity.

The United States must have a cost-imposing strategic response to make Beijing's aggression unaffordable, even as the American economy and U.S. power grow. This stance will require real, sustained, near-unprecedented U.S. growth; stronger partnerships; synchronized economic and security policies; and American energy independence—but above all, it will require a very honest perspective about the nature and designs of the PRC as more of a threat than a competitor.[10] The next President should use the State Department and its array of resources to reassess and lead this effort, just as it did during the Cold War. The U.S. government needs an Article X for China,[11] and it should be a presidential mandate. Along with the National Security Council, the State Department should draft an Article X, which should be a deeply philosophical look at the China challenge.

Many foreign policy professionals and national leaders, both in government and the private sector, are reluctant to take decisive action regarding China. Many are vested in an unshakable faith in the international system and global norms. They are so enamored with them they cannot brook any criticisms or reforms, let alone

acknowledge their potential for being abused by the PRC. Others refuse to acknowledge Beijing's malign activities and often pass off criticism as conspiracy theories.

For instance, many were quick to dismiss even the possibility that COVID-19 escaped from a Chinese research laboratory. The reality, however, is that the PRC's actions often do sound like conspiracy theories—because they are conspiracies. In addition, some knowingly or not parrot the Communist line: Global leaders including President Joe Biden, have tried to normalize or even laud Chinese behavior. In some cases, these voices, like the global corporate giants BlackRock and Disney, directly benefit from doing business with Beijing.

On the other hand, others acknowledge the dangers posed by the PRC, but believe in a moderating approach to accommodate its rise, a policy of "compete where we must, but cooperate where we can," including on issues like climate change. This strategy has demonstrably failed.

As with all global struggles with Communist and other tyrannical regimes, the issue should never be with the Chinese people but with the Communist dictatorship that oppresses them and threatens the well-being of nations across the globe.[12] That said, the nature of Chinese power today is the product of history, ideology, and the institutions that have governed China during the course of five millennia, inherited by the present Chinese leaders from the preceding generations of the CCP.[13] In short, the PRC challenge is rooted in China's strategic culture and not just the Marxism–Leninism of the CCP, meaning that internal culture and civil society will never deliver a more normative nation. The PRC's aggressive behavior can only be curbed through external pressure.

The Islamic Republic of Iran

The ongoing protests in the Islamic Republic of Iran (Iran), which are widely viewed as a new revolution, have shown that the Islamic regime, which has been in power since 1979 when Ayatollah Khomeini became the leader, is at its weakest state in its history and is at odds not only with its own people but also its regional neighbors. Iran is home to a proud and ancient culture, yet its people have struggled to achieve democracy and have had to endure a hostile theocratic regime that vehemently opposes freedom. The time may be right to press harder on the Iranian theocracy, support the Iranian people, and take other steps to draw Iran into the community of free and modern nations.

Unfortunately, the Obama and Biden Administrations have propped up the brutal Islamist theocracy that has hurt the Iranian people and threatened nuclear war. For example, the Obama Administration's 2015 Joint Comprehensive Plan of Action, commonly referred to as the Iran nuclear deal, gave the Islamic regime a crucial monetary lifeline after the Green Movement protests in 2009, which, while ultimately unsuccessful, did succeed in weakening the regime and showing the world that younger Iranians want freedom.

Instead of pressuring the Iranian theocracy to move toward democracy, the Obama Administration threw the brutal regime an economic lifeline by giving hundreds of billions of dollars to the Iranian government and providing other sanctions relief. This economic relief did not moderate the regime, but emboldened its brutality, its efforts to expand its nuclear weapons programs, and its support for global terrorism. Former President Obama has admitted his lack of support for the Green Movement during his Administration was an error and blamed it on poor advisors—yet those same advisors are involved with the Biden Administration's insistence on reducing pressure on the theocracy and resurrecting a nuclear deal.

The next Administration should neither preserve nor repeat the mistakes of the Obama and Biden Administrations. The correct future policy for Iran is one that acknowledges that it is in U.S. national security interests, the Iranian people's human rights interests, and a broader global interest in peace and stability for the Iranian people to have the democratic government they demand. This decision to be free of the country's abusive leaders must of course be made by the Iranian people, but the United States can utilize its own and others' economic and diplomatic tools to ease the path toward a free Iran and a renewed relationship with the Iranian people.

The Bolivarian Republic of Venezuela

Once a model of democracy and a true U.S. ally, the Bolivarian Republic of Venezuela (Venezuela) has all but collapsed under the Communist regimes of the late Hugo Chavez and Nicolas Maduro. In the 24 years since Hugo Chavez was first elected Venezuelan president in 1999, the country has violently cracked down on pro-democracy citizens and organizations, shattered its once oil-rich economy, empowered domestic criminal cartels, and helped fuel a hemispheric refugee crisis.

Venezuela has swung from being one of the most prosperous, if not *the* most prosperous, country in South America to being one of the poorest. Its Communist leadership has also drawn closer to some of the United States' greatest international foes, including the PRC and Iran, which have long sought a foothold in the Americas. Indeed, Venezuela serves as a reminder of just how fragile democratic institutions that are not maintained can be. To contain Venezuela's Communism and aid international partners, the next Administration must take important steps to put Venezuela's Communist abusers on notice while making strides to help the Venezuelan people. The next Administration must work to unite the hemisphere against this significant but underestimated threat in the Southern Hemisphere.

Russia

One issue today that starkly divides conservatives is the Russia–Ukraine conflict. The common ground seems to be recognition that presidential leadership in 2025 must chart the course.

- One school of conservative thought holds that as Moscow's illegal war of aggression against Ukraine drags on, Russia presents major challenges to U.S. interests, as well as to peace, stability, and the post-Cold War security order in Europe. This viewpoint argues for continued U.S. involvement including military aid, economic aid, and the presence of NATO and U.S. troops if necessary. The end goal of the conflict must be the defeat of Russian President Vladimir Putin and a return to pre-invasion border lines.

- Another school of conservative thought denies that U.S. Ukrainian support is in the national security interest of America at all. Ukraine is not a member of the NATO alliance and is one of the most corrupt nations in the region. European nations directly affected by the conflict should aid in the defense of Ukraine, but the U.S. should not continue its involvement. This viewpoint desires a swift end to the conflict through a negotiated settlement between Ukraine and Russia.

- The tension between these competing positions has given rise to a third approach. This conservative viewpoint eschews both isolationism and interventionism. Rather, each foreign policy decision must first ask the question: What is in the interest of the American people? U.S. military engagement must clearly fall within U.S. interests; be fiscally responsible; and protect American freedom, liberty, and sovereignty, all while recognizing Communist China as the greatest threat to U.S. interests. Thus, with respect to Ukraine, continued U.S. involvement must be fully paid for; limited to military aid (while European allies address Ukraine's economic needs); and have a clearly defined national security strategy that does not risk American lives.

Regardless of viewpoints, all sides agree that Putin's invasion of Ukraine is unjust and that the Ukrainian people have a right to defend their homeland. Furthermore, the conflict has severely weakened Putin's military strength and provided a boost to NATO unity and its importance to European nations.

The next conservative President has a generational opportunity to bring resolution to the foreign policy tensions within the movement and chart a new path forward that recognizes Communist China as the defining threat to U.S. interests in the 21st century.

The Democratic People's Republic of Korea

Peace and stability in Northeast Asia are vital interests of the United States. The Republic of Korea (South Korea) and Japan are critical allies for ensuring a free and open Indo–Pacific. They are indispensable military, economic, diplomatic, and technology partners. The Democratic People's Republic of Korea (DPRK, or North

Korea) must be deterred from military conflict. The United States cannot permit the DPRK to remain a de facto nuclear power with the capacity to threaten the United States or its allies. This interest is both critical to the defense of the American homeland and the future of global nonproliferation. The DPRK must not be permitted to profit from its blatant violations of international commitments or to threaten other nations with nuclear blackmail. Both interests can only be served if the U.S. disallows the DPRK's rogue regime behavior.

OTHER INTERNATIONAL ENGAGEMENTS

Western Hemisphere

The United States has a vested interest in a relatively united and economically prosperous Western Hemisphere. Nonetheless, the region now has an overwhelming number of socialist or progressive regimes, which are at odds with the freedom and growth-oriented policies of the U.S. and other neighbors and who increasingly pose hemispheric security threats. A new approach is therefore needed, one that simultaneously allows the U.S. to re-posture in its best interests and helps regional partners enter a new century of growth and opportunity.

The following core policies must be part of this new direction:

- **A "sovereign Mexico" policy.** Mexico is currently a national security disaster. Bluntly stated, Mexico can no longer qualify as a first-world nation; it has functionally lost its sovereignty to muscular criminal cartels that effectively run the country. The current dynamic is not good for either U.S. citizens or Mexicans, and the perfect storm created by this cartel state has negative effects that are damaging the entire hemisphere. The next Administration must both adopt a posture that calls for a fully sovereign Mexico and take all steps at its disposal to support that result in as rapid a fashion as possible.

- **A fentanyl-free frontier.** The same cartels that parasitically run Mexico are also working with the PRC to fuel the largest drug crisis in the history of North America. These Mexican cartels are working closely with Chinese fentanyl precursor chemical manufacturers, importing those precursor chemicals into Mexico, manufacturing fentanyl on Mexican soil, and shipping it into the United States and elsewhere. The highly potent narcotic is having an unprecedented lethal impact on the American citizenry. The next Administration must leverage its new insistence on a sovereign Mexico and work with other Western Hemisphere partners to halt the fentanyl crisis and put a decisive end to this unprecedented public health threat.

- **A hemisphere-centered approach to industry and energy.** The next Administration has a golden opportunity to make key economic changes that will not only provide tremendous economic opportunities for Americans but will also serve as an economic boon to the entire Western Hemisphere.

  First, the United States must do everything possible, with both resources and messaging, to shift global manufacturing and industry from more distant points around the globe (especially from the increasingly hostile and human rights-abusing PRC) to Central and South American countries. "Re-hemisphering" manufacturing and industry closer to home will not only eliminate some of the more recent supply-chain issues that damaged the U.S. economy but will also represent a significant economic improvement for parts of the Americas in need of growth and stabilization.

  Similarly, the United States must work with Mexico, Canada, and other countries to develop a hemisphere-focused energy policy that will reduce reliance on distant and manipulable sources of fossil fuels, restore the free flow of energy among the hemisphere's largest producers, and work together to increase energy production, including for nations that are looking for dramatic economic expansion.

- **A "local" approach to security threats.** Western Hemisphere nations, including those in the Caribbean, arguably have stronger cultural and historical ties to the United States than most other countries and regions in the world. Yet Central and South America are moving rapidly into the sphere of anti-American, external state actors, including the PRC, Iran, and Russia. Specific countries in the Americas, such as Venezuela, Colombia, Guyana, and Ecuador, are either increasingly regional security threats in their own rights or are vulnerable to hostile extra-continental powers. The U.S. has an opportunity to lead these democratic neighbors to fight against the external pressure of threats from abroad and address local regional security concerns. This leadership and collaboration must span all tools at the disposal of U.S. allies and partners, including security-focused cooperation.

Middle East and North Africa

The next Administration must re-engage with Middle Eastern and North African nations and not abandon the region. Without U.S. leadership, the region may tumble further into chaos or fall prey to American adversaries. This recommendation requires a multi-dimensional strategy.

- First, the U.S. must prevent Iran from acquiring nuclear technology and delivery capabilities *and more broadly block Iranian ambitions*. This means, inter alia, reinstituting and expanding Trump Administration sanctions; providing security assistance for regional partners; supporting, through public diplomacy and otherwise, freedom-seeking Iranian people in their revolt against the mullahs; and ensuring Israel has both the military means and the political support and flexibility to take what it deems to be appropriate measures to defend itself against the Iranian regime and its regional proxies Hamas, Hezbollah, and Palestinian Islamic Jihad.

- Second, the next Administration should build on the Trump Administration's diplomatic successes by encouraging other Arab states, including Saudi Arabia, to enter the Abraham Accords. Related policies should include reversing, as appropriate, the Biden Administration's degradation of the long-standing partnership with Saudi Arabia. The Palestinian Authority should be defunded. A further key priority is keeping Türkiye in the Western fold and a NATO ally. This includes a vigorous outreach to Türkiye to dissuade it from "hedging" toward Russia or China, which is likely to require a rethinking of U.S. support for YPG/PKK [People's Protection Units/Kurdistan Worker's Party] Kurdish forces, which Ankara believes are an existential threat to its security. For the foreseeable future—and much longer than one new Administration—Middle Eastern oil will play a key role in the world economy. Therefore, the U.S. must continue to support its allies and compete with its economic adversaries, including China. Relations with Saudi Arabia should be strengthened in a way that seriously curtails Chinese influence in Riyadh.

- Third, it is in the U.S. national interest to build a Middle East security pact that includes Israel, Egypt, the Gulf states, and potentially India, as a second "Quad" arrangement. Protecting freedom of navigation in the Gulf and in the Red Sea/Suez Canal is vital to the world economy and therefore to U.S. prosperity as well. In North Africa, security cooperation with European allies, especially France, will be vital to limit growing Islamist threats and the incursion of Russian influence through positionings of the Wagner Group.

- The U.S. cannot neglect a concern for human rights and minority rights, which must be balanced with strategic and security considerations. Special attention must be paid to challenges of religious freedom, especially the status of Middle Eastern Christians and other religious minorities, as well as the human trafficking endemic to the region.

Sub-Saharan Africa

Africa's importance to U.S. foreign policy and strategic interests is rising and will only continue to grow. Its explosive population growth, large reserves of industry-dependent minerals, proximity to key maritime shipping routes, and its collective diplomatic power ensure the continent's global importance. Yet as Africa's strategic significance has grown, the U.S.'s relative influence there has declined. Terrorist activity on the continent has increased, while America's competitors are making significant gains for their own national interests. The PRC's companies dominate the African supply chain for certain minerals critical to emerging technologies. African nations comprise major country-bloc elements that shield the PRC and Russia from international isolation for their human rights abuses—and African nations staunchly support PRC foreign policy goals on issues such as Hong Kong occupation, South China Seas dispute arbitration, and Taiwan.

The new Administration can correct this strategic failing of existing policy by prioritizing Africa and by undertaking fundamental changes in how the United States works with African nations.

At a bare minimum, the next Administration should:

- **Shift strategic focus from assistance to growth.** Reorient the focus of U.S. overseas development assistance away from stand-alone humanitarian development aid and toward fostering free market systems in African countries by incentivizing and facilitating U.S. private sector engagement in these countries. Development aid alone does little to develop countries and can fuel corruption and violent conflict. While the United States should always be willing to offer emergency and humanitarian relief, both U.S. and African long-term interests are better served by a free market-based, private growth-focused strategy to Africa's economic challenges.

- **Counter malign Chinese activity on the continent.** This should include the development of powerful public diplomacy efforts to counter Chinese influence campaigns with commitments to freedom of speech and the free flow of information; the creation of a template "digital hygiene" program that African countries can access to sanitize and protect their sensitive communications networks from espionage by the PRC and other hostile actors; the recognition of Somaliland statehood as a hedge against the U.S.'s deteriorating position in Djibouti; and a focus on supporting American companies involved in industries important to U.S. national interests or that have a competitive advantage in Africa.

- **Counter the furtherance of terrorism.** African country-based terrorist groups like Boko Haram may currently lack the capability to attack the

United States, but at least some of them would eventually try if allowed to consolidate their operations and plan such attacks. The immediate threat they pose lies in their abilities and willingness to strike American targets in their regions of operation or to harm U.S. interests in other ways. The U.S. should support capable African military and security operations through the State Department and other federal agencies responsible for granting foreign military education, training, and security assistance.

- **Build a coalition of the cooperative.** Rather than thinning limited federal resources by spreading funds across all countries (including some that are unsupportive or even hostile to the United States,) the next Administration should focus on those countries with which the U.S. can expect a mutually beneficial relationship. After being designated focus countries by the State Department, such nations should receive a full suite of American engagement. That said, the next Administration should still maintain a baseline level of contact even with those countries with which it has less-than-fruitful relationships in order to encourage positive developments and to be in position to seize unexpected diplomatic opportunities as they arise.

- **Focus on core diplomatic activities, and stop promoting policies birthed in the American culture wars.** African nations are particularly (and reasonably) non-receptive to the U.S. social policies such as abortion and pro-LGBT initiatives being imposed on them. The United States should focus on core security, economic, and human rights engagement with African partners and reject the promotion of divisive policies that hurt the deepening of shared goals between the U.S. and its African partners.

Europe

American foreign policy has long benefited from cooperation with the countries of Europe (generally, the EU), and any conservative Administration should build on this resource. Yet the transatlantic relationship is complex, with security, trade, and political dimensions.

First, the Europe, Eurasia, and Russia region is made up of relatively wealthy and technologically advanced societies that should be expected to bear a fair share of both security needs and global security architecture: The United States cannot be expected to provide a defense umbrella for countries unwilling to contribute appropriately. At stake after 2024 will be examining the status of the Wales Pledge of 2 percent of gross domestic product toward defense by NATO members. The new Administration will also want to encourage nations to exceed that pledge.

Second, transatlantic trade is a significant part of the global economy, and it is in the U.S. national interest to amplify it, especially because this means weaning

Europe of its dependence on China. However, there are also transatlantic trade tensions that disturb the U.S.–EU relationship and that have been evident across Administrations. The U.S. must undertake a comprehensive review of trade arrangements between the EU and the United States to assure that U.S. businesses are treated fairly and to build productive reciprocity. Outside the EU, trade with the post-Brexit U.K. needs urgent development before London slips back into the orbit of the EU.

Third, in the wake of Brexit, EU foreign policy now takes place without U.K. input, which disadvantages the United States, given that the U.K. has historically been aligned with many U.S. positions. Therefore, U.S. diplomacy must be more attentive to inner-EU developments, while also developing new allies inside the EU—especially the Central European countries on the eastern flank of the EU, which are most vulnerable to Russian aggression.

South and Central Asia

Many key American interests and responsibilities are found in South and Central Asia. Specifically, continuing to advance the bilateral relationship with India to mutual benefit is a crucial objective for U.S. policy. India plays a crucial role in countering the Chinese threat and securing a free and open Indo–Pacific. It is a critical security guarantor for the key routes of air and sea travel linking East and West and an important emerging U.S. economic partner. For instance, the 2019 Department of Defense *Indo–Pacific Strategy Report* noted that the Indian Ocean area "is at the nexus of global trade and commerce, with nearly half of the world's 90,000 commercial vessels and two thirds of global oil trade traveling through its sea lanes. The region boasts some of the fastest-growing economies on Earth."[14]

Meanwhile, the threat of transnational terrorism remains acute. The humiliating withdrawal of U.S. troops from Afghanistan after a 20-year military campaign has created new challenges. It has provided an opportunity to reset the deeply troubled U.S.–Pakistan relationship and reassess U.S. counterterrorism strategy in the region. The long-standing India–Pakistan rivalry and tensions regarding the disputed territory of Kashmir continue to pose risks to regional stability, especially because both countries are nuclear powers.

The State Department's role in strengthening the regional security and economic framework linking the U.S and India is crucial. In addition, the department has important functional responsibilities in dealing with a range of threats from nuclear proliferation to transnational proliferation. While American statecraft should also seek to improve bilateral relations throughout the region, U.S. policy must be clear-eyed and realistic about the perfidiousness of the Taliban regime in Afghanistan and the military–political rule in Pakistan. There can be no expectation of normal relations with either.

The priority for statecraft is advancing the U.S.–Indian role as a cornerstone of the Quad, a cooperative framework including the U.S., India, Japan, and Australia. The Quad is comprised of the key nations in coordinating efforts for a free and open Indo–Pacific. It is an overarching group that nests the key U.S. bilateral and trilateral cooperative efforts that facilitate U.S. collaborative efforts across the Indo–Pacific. The State Department should also encourage the "Quad-Plus" concept that allows other regional powers to participate in Quad coordination on issues of mutual interest. Further, the State Department must support an integrated federal effort to deliver a revamped regional strategy for South Asia, as well as leading the execution of key tasks to implement the strategy.[15]

The Arctic

Because of Alaska, the U.S. is an Arctic nation. The Arctic is a vast expanse of land and sea rich in resources including fish, minerals, and energy. For example, the region is estimated to contain 90 million barrels of oil and one-quarter of the world's undiscovered natural gas reserves.[16] The Arctic is lightly populated: Only 4 million people in the world live above the Arctic Circle, with more than half of those living in Russia. Only around 68,000 people in Alaska live above the Arctic Circle.[17] However, the sheer immensity of the Alaskan Arctic means its population density is less than one person per square mile.[18]

The United States has several strong interests in the Arctic region. The rate of melting ice during summer months has led to increased interest not only from shipping and tourism sectors, but also from America's global competitors, who are interested in exploiting the region's strategic importance and accessing its bounty of natural resources.

In the not-too-distant future, there will be a growing interest in the Arctic from both state and non-state actors alike. China has been open about its interest in the region, primarily as a highway for trade but also for its rich natural resources. While the PRC's increasing intervention in Arctic affairs is a bit strained because it does not have an Arctic coastline, Russia does—and Russia has made no secret of its view that the Arctic is vital for economic and military reasons. Russia has invested heavily in new and refurbished Arctic bases and cold-weather equipment and capabilities. The north star of U.S. Arctic policy should remain national sovereignty, safeguarded through robust capabilities as well as through diplomatic, economic, and legal attentiveness.

The next Administration should embrace the view that NATO must acknowledge that it is, in part, an Arctic alliance. With the likely accession of Finland and Sweden to NATO, every Arctic nation except for Russia will be a NATO member state. NATO has been slow to appreciate that the Arctic is a theater that it must defend, especially considering Russia's brazen aggression against Ukraine. NATO must develop and implement an Arctic strategy that recognizes the importance of

the region and ensures that Russian use of Arctic waters and resources does not exceed a reasonable footprint.

The U.S. should unapologetically pursue American interests in the Arctic by promoting economic freedom in the region. Economic freedom spurs prosperity, innovation, respect for the rule of law, jobs, and sustainability. Most important, economic freedom can help to keep the Arctic stable and secure.

The U.S. should work to ensure that shipping lanes in the Arctic remain available to all global commercial traffic and free of onerous fees and burdensome administrative, regulatory, and military requirements. While this should be the next Administration's policy with respect to all countries that might seek to block free-flowing commercial traffic, the next Administration will clearly have to exert substantial attention toward Russia.

Both the U.S. Coast Guard and the U.S. Navy are vital tools to ensure an unmonopolized Arctic. It is imperative that the Navy and Coast Guard continue to expand their fleets, including planned icebreaker acquisitions, to assure Arctic access for the United States and other friendly actors. The remote and harsh conditions of the Arctic also make unmanned system investment and use particularly appealing for providing additional situational awareness, intelligence, surveillance, and reconnaissance. The Coast Guard should also consider upgrading facilities, such as its Barrow station, to reinforce its Arctic capabilities and demonstrate a greater commitment to the region.

The People's Republic of China has declared itself a "near-Arctic state," which is an imaginary term non-existent in international discourse. The United States should work with like-minded Arctic nations, including Russia, to raise legitimate concerns about the PRC's so-called Polar Silk-Road ambitions.

Concerning Greenland, the opening of a U.S. consulate in Nuuk is welcome. A formal year-round diplomatic presence is an effective way for the U.S. to better understand local political and economic dynamics. Furthermore, given Greenland's geographic proximity and its rising potential as a commercial and tourist location, the next Administration should pursue policies that enhance economic ties between the U.S. and Greenland.

INTERNATIONAL ORGANIZATIONS

Defending and protecting the American people and advancing their interests requires the United States to engage in a broad spectrum of bilateral and multilateral relationships, including participating in international organizations. Working with other governments through international organizations like the United Nations (U.N.) can be tremendously useful—but membership in these organizations must always be understood as a means to attain defined goals rather than an end in itself.

Engagement with international organizations is one relatively easy way for the U.S. to defend its interests and to seek to address problems in concert with other

nations, but it is not the only option—and American diplomats should be clear-eyed about international organizations' strengths and weaknesses. When such institutions act against U.S. interests, the United States must be prepared to take appropriate steps in response, up to and including withdrawal. The manifest failure and corruption of the World Health Organization (WHO) during the COVID-19 pandemic is an example of the danger that international organizations pose to U.S. citizens and interests.

The next Administration must end blind support for international organizations. If an international organization is effective and advances American interests, the United States should support it. If an international organization is ineffective or does not support American interests, the United States should not support it. Those that are effective will still require constant pressure from U.S. officials to ensure that they remain effective. Serious consideration should also be given to withdrawal from organizations that no longer have value, quietly undermine U.S. interests or goals, or disproportionately rely on U.S. financial contributions to survive.

The Trump Administration's "tough love" approach to international organizations served American interests. For example, the Trump Administration withdrew from, or terminated funding for, the United Nations Human Rights Council, the United Nations Educational, Scientific and Cultural Organization, the United Nations Relief and Works Agency, and the WHO. The results were redeployment of taxpayer dollars to better uses—and other organizations "getting the message" that the United States will not allow itself and its money to be used to undermine its own interests.

The Biden Administration reversed many of these decisions. Currently, U.S. funding for international organizations is more than $16 billion in fiscal year 2021—a sharp increase from $10.8 billion in fiscal year 2015.[19] Millions of American taxpayer dollars go to support policies and initiatives that hurt the United States and American citizens.

The next Administration should direct the Secretary of State to initiate a comprehensive cost-benefit analysis of U.S. participation in *all* international organizations. This review should take into account long-standing provisions in federal law that prohibit the use of taxpayer dollars to promote abortion, population control, and terrorist activities, as well as other applicable restrictions on funding for international organizations and agencies with a view to withholding U.S. funds in cases of abuses.

International organizations should not be used to promote radical social policies as if they were human rights priorities. Doing so undermines actual human rights and weakens U.S. credibility abroad. The next Administration should use its voice, influence, votes, and funding in international organizations to promote authentic human rights and respect for sovereignty based on the binding

international obligations contained in treaties that have been constitutionally ratified by the U.S. government. It must promote a strict text-based interpretation of treaty obligations that does not consider human rights treaties as "living instruments" both within the State Department and within international organizations that receive U.S. funding, including by making respect for sovereignty and authentic human rights a litmus test of personnel decisions and elections processes within international organizations.

The U.S. Commission on Unalienable Human Rights focused on the primacy of civil and political rights in its inaugural report, which remains an important guidepost for bilateral and multilateral engagements on human rights. The commission's report is a roadmap for revamping and reenergizing U.S. human rights policy and should be the basis for both structural and policy changes throughout the State Department.[20] All U.S. multilateral engagements must be reevaluated in light of the work of the commission, and initiatives that promote controversial policies must be halted and rolled back.

It is paramount to create a healthy culture of respect for life, the family, sovereignty, and authentic human rights in international organizations and agencies. To support this goal, the U.S. led an effort during the Trump Administration to forge a consensus among like-minded countries in support of human life, women's health, support of the family as the basic unit of human society, and defense of national sovereignty. The result was the Geneva Consensus Declaration on Women's Health and Protection of the Family.[21] All U.S. foreign policy engagements that were produced and expanded under the Obama and Biden Administrations must be aligned with the Geneva Consensus Declaration and the work of the U.S. Commission on Unalienable Human Rights.

The U.S. government should not and cannot promote or fund abortion in international programs or multilateral organizations. Technically, the United States can prevent its international funding from going toward abortions, but the U.S. will have a greater impact by including like-minded nations and building on the coalition launched through the Geneva Consensus Declaration, with a view to shaping the work of international agencies by functioning as a united front.

The COVID-19 pandemic made it painfully clear that both international organizations—and some countries—are only too willing to trample human rights in the name of public health. For example, the WHO was, and remains, willing to support the suppression of basic human rights, partially because of its close relationship with human rights abusers like the PRC.

The next Administration should unequivocally embrace the premise that humanity and the international community can simultaneously tackle pandemics and other emergent health threats without impeding the rights of people. It must also become a vocal surrogate for people in countries where rights are being suppressed in the name of health. This will likely require greater restrictions on

the supply of federal dollars to the WHO and other health-focused international organizations pending adjustment of their policies.

The United States must return to treating international organizations as vehicles for promoting American interests—or take steps to extract itself from those organizations.

SHAPING THE FUTURE

Development of a grand foreign policy strategy is key to the next Administration's success, but without addressing structural and related issues of the State Department, this strategy will be at risk. The Hart–Rudman Commission called for a significant restructuring of the State Department specifically and foreign assistance programs generally, stating that funding increases could only be justified if there was greater confidence that institutions would use their funding effectively.[22] Sadly, the exact opposite has occurred. The State Department has metastasized in structure and resources, but neither the function of the department nor the use of taxpayer dollars has improved. The next Administration can take steps to remedy these deficiencies.

The State Department's greatest problem is certainly not an absence of resources. As noted, the department boasts tens of thousands of employees and billions of dollars of funding—including significant amounts of discretionary funding. It also exists among a broader array of federal agencies that are duplicative, particularly when it comes to the provision of direct and indirect foreign assistance. Realistically, meaningful reform of the State Department will require significant streamlining.

Below are some key structural and operational recommendations that will be essential for the next Administration's success, and which will lay crucial foundations for other necessary reforms.

- **Develop a reorganization strategy.** Despite periodic attempts by previous Administrations (including the Trump Administration) to make more than cosmetic changes to the State Department, its structure has remained largely unchanged since the 20th century.[23] The State Department will better serve future Administrations, regardless of party, if it were to be meaningfully streamlined. The next Administration should develop a complete hypothetical reorganization of the department—one which would tighten accountability to political leadership, reduce overhead, eliminate redundancy, waste fewer taxpayer resources, and recommend additional personnel-related changes for improvement of function. Such reorganization could be creative, but also carefully review specific structure-related problems that have been documented over the years. This reorganization effort would necessarily assess what office closures

can be carried out with and without congressional approval. Timelines for action on these fronts should be developed accordingly, but speed should be a priority.

- **Consolidate foreign assistance authorities.** Foreign assistance is a critical foreign policy tool that is too often disconnected from the federal government's practice of foreign policy. Bureaucrats spend significant energy resisting the use of non-emergency foreign assistance to leverage positive results for the United States, even though it is a perfectly reasonable proposition. The coordination of foreign assistance dollars is also difficult because the foreign assistance budget and foreign loan issuance authorities are divided across numerous Cabinet departments, smaller agencies, and other offices.

  The next Administration should take steps to ensure that future foreign assistance clearly and unambiguously supports the President's foreign policy agenda. For example, the next administrator of the U.S. Agency for International Development, which is technically subordinate to the State Department, should be authorized to take on the additional role of Director of Foreign Assistance with the rank of Deputy Secretary and oversee all foreign assistance. This role—which existed briefly during the George W. Bush Administration before it was eliminated by the Obama Administration—would empower the dual-hatted official to better align and coordinate with the manifold foreign assistance programs across the federal government. The next Administration should also evaluate whether these multiple sources of foreign assistance are in the national interest and, if not, develop a plan to consolidate foreign assistance authorities.

- **Make public diplomacy and international broadcasting serve American interests.** A key part of U.S. foreign policy is the ability to communicate with not only governments but with the peoples of the world. Indeed, in some ways, communicating directly with the public is more important than communicating with governments, particularly in times of governmental conflict or disagreement. Public diplomacy has historically been, and remains, vital to American foreign policy success. Unfortunately, U.S. public diplomacy, which largely relies on taxpayer-funded international broadcasting outlets, has been deeply ineffective in recent years.

  The U.S. government's first foray into international broadcasting started with the Voice of America radio broadcast in 1942, which was intended as

a tool to communicate directly with the people of Europe during World War II. During the next half-century, America's international broadcasting efforts both expanded and increased in sophistication as the United States shifted out of its "hot" war in Europe and into the Cold War with the Soviet Union. U.S. international broadcasting prowess, and the confident willingness to communicate the correctness of American ideals in the face of global resistance, arguably hit its peak near the conclusion of the Cold War in the late 1980s.

Since the fall of the Berlin Wall in 1989 and the subsequent collapse of Soviet and Eastern Bloc Communism, factors including the false appeal of a so-called peace dividend triggered a slide in the U.S. ability to communicate a pro-freedom message to the rest of the world and in its commitment to do so. Ironically, this slide accompanied the rise of the Internet and mobile phone technologies, which arguably facilitated the most significant revolution in human communication since the invention of the printing press.

The United States must reassert its public diplomacy obligations by restoring its international broadcasting infrastructure as part of the broader U.S. foreign policy framework, consolidating broadcasting resources and recommitting to people-focused and pro-freedom messaging and content.

- **Engage in cyber diplomacy.** Cyberspace has become an arena for competition between the U.S. and nations that seek and export digital authoritarianism. Cyberspace protection is critical to national security and deserving of commensurate diplomatic resources. Defined as "the use of diplomatic tools to address issues arising in and through cyberspace," cyber diplomacy is a key part of the U.S. government's toolkit for preventing and addressing cyber threats.[24]

  The model for cyberspace that the U.S. espouses is based on democracy and freedom of information. It is "an open, interoperable, secure, reliable, market-drive, domain that reflects democratic values and protects privacy."[25] Russia and China, meanwhile, are authoritarian regimes that use the Internet to limit public opposition and control information. They have created technological tools to enforce dominance over their peoples, and at the U.N. and international organizations dealing with cyberspace, they strive to push standards that assist their totalitarian efforts and undermine Western nations.

Simultaneously, Russia, China, and lesser adversaries exploit the more open networks of countries like the U.S. to undermine democracy through disinformation and propaganda. They have attempted to influence U.S. elections; enabled or encouraged actors to exploit cyber vulnerabilities to commit theft of real or intellectual property; and have challenged U.S. governmental, military, and critical infrastructure networks with targeted malware.

In short, the cyberspace era has gradually evolved from one of exploration, innovation, and cooperation to one that retains these features but is also marked by aggressive competition and persistent threats. To meet this reality, the State Department must move beyond its traditional model of attempting to establish non-binding, informal world standards of acceptable cyberspace behavior. The State Department should work with allies to establish a clear framework of enforceable norms for actions in cyberspace, moving beyond the voluntary norms of the United Nations Group of Governmental Experts.[26]

The State Department should also assist the Department of Defense to go "on offence" against adversaries. "Deterrence as a strategic approach has not stemmed the onslaught of cyber aggression below the level of armed conflict."[27] The traditional U.S. defensive approach based on deterrence followed by reaction to crossed "red lines" is no longer effective. Adversaries can evade this strategy through multiple tactical lines of action below the level of armed conflict, and such actions have a cumulative strategic effect. The State Department's role should be to work with allies and engage with adversaries when necessary to draw clear lines of unacceptable conduct. Global financial infrastructure, nuclear controls, and public health are particularly important areas in which consensus may even be found across ideological lines.

These mission-essential institutional initiatives should be joined with others to establish a presidentially directed and durable U.S. foreign policy.

CONCLUSION

The next conservative President has the opportunity and the duty to restructure the creation and execution of U.S. foreign policy so that it is focused on his or her vision for the nation's role in the world. The policy ideas and reform recommendations outlined in this chapter provide guidance about how the State Department can contribute to this objective.

In the main, this chapter refocuses attention away from the special interests and social experiments that are used in some quarters to capture U.S. foreign policy.

The ideas and recommendations herein are premised on the belief that a rigorous adherence to the national interest is the most enduring foundation for U.S. grand strategy in the 21st century.

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7

INTELLIGENCE COMMUNITY

Dustin J. Carmack

MISSION STATEMENT

To arm a future incoming conservative President with the knowledge and tools necessary to fortify the United States Intelligence Community; to defend against all foreign enemies and ensure the security and prosperity of our sovereign nation, devoid of all political motivations; and to maintain constitutional civil liberties.

OVERVIEW

The United States Intelligence Community (IC) is a vast, intricate bureaucracy spread throughout 18 independent and Cabinet subagencies.[1] According to the Office of the Director of National Intelligence (ODNI), the IC's mission is "to collect, analyze, and deliver foreign intelligence and counterintelligence information to America's leaders so they can make sound decisions to protect our country."[2]

An incoming conservative President needs to use these intelligence authorities aggressively to anticipate and thwart our adversaries, including Russia, Iran, North Korea, and especially China, while maintaining counterterrorism tools that have demonstrated their effectiveness. This means empowering the right personnel to manage, build, and effectively execute actions dispersed throughout the IC to deliver intelligence in an ever-challenging world. It also means removing redundancies, mission creep, and IC infighting that could prevent these collection tools from providing objective, apolitical, and empirically backed intelligence to the IC's premier customer: the President of the United States.

Today, as Abraham Lincoln famously said, "The occasion is piled high with difficulty, and we must rise with the occasion.... [W]e must think anew, and act

anew."[3] The Intelligence Community maintains an incredible capacity to achieve its mission, but both the IC and the somewhat antiquated infrastructure that supports it often place too high a priority on yesterday's threats and methodologies instead of trying to identify possible future threats or the methodologies that might be needed to combat them. The IC also often spends too much time overcorrecting for past mistakes. The unintended consequences include hesitancy, groupthink, and an overly cautious approach that allows personal incentives to drive preset courses.

The IC must be perceived as a depoliticized protector of America's civil rights and security. The American people are understandably frustrated by the fact that those who abuse power are rarely held to account for their actions. This must change, beginning with leadership that is both committed to ensuring that these agencies faithfully execute the laws of the land under the Constitution and resolved to punish and remove any officials who have abused the public trust.

The IC must also start to look forward, not backward. A concerted, disciplined, leadership-led initiative must be undertaken to refocus and shift IC prioritization, funding, and authorities to new and emerging threats, technologies, and methodologies if the United States is to prevail against its global adversaries.[4] Unfortunately, America's major strategic threat is a nation-state peer and possibly ahead of the U.S. in strategic areas. An incoming President must understand that today's intelligence competition could well require analyzing technologies the U.S. does not have or compartmentalizing certain information as was done during the Cold War because of intelligence penetration. A future President's ability to drive the resources needed to defeat another nation-state giant should therefore be the focus of near-term IC reforms.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (ODNI)

The ODNI was established in the aftermath of the attacks on 9/11 and intelligence failures leading up to the 2003 U.S. war in Iraq. The office and its functions stem from authorities established under executive orders promulgated by President George W. Bush in 2004, followed by statutory authorizations in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA).[5]

Proponents of an ODNI hoped to establish reforms similar to the Goldwater–Nichols Department of Defense (DOD) reforms of the 1980s, which identified recurring problems within DOD's command-and-control architecture and led to unified Combatant Commands with the Chairman of the Joint Chiefs of Staff as the senior ranking member of the armed forces and principal military adviser to the President. The ODNI was envisioned as a small but powerful IC coordinating agency led by a Director of National Intelligence (DNI). As the President's principal intelligence adviser, the DNI would lead and provide oversight of the President's intelligence authorities while wielding a cudgel—budget and appointment

authorities—to break institutional silos that had caused past intelligence integration failures.

Originally envisioned by the 9/11 Commission as a strengthened, authoritative position, the final congressionally negotiated product signed by President Bush has led to ambiguous and vague authorities that are dependent on who is selected as DNI and Central Intelligence Agency (CIA) Director and their level of support from the White House and National Security Council (NSC). 9/11 Commission Executive Director Philip Zelikow warned in a 2004 hearing that creating a new agency "lacking any existing institutional base...would require authorities at least as strong as those we have proposed or else it would create a bureaucratic fifth wheel that would make the present situation even worse."[6] The ODNI has become that bureaucratic fifth wheel about which Zelikow warned.

For example, under the Bush Administration's initial legislative proposal, the CIA Director would have been under the "authority, direction, and control" of the DNI and no longer the head of an autonomous agency. Additional mechanisms envisioned full budget authority for the DNI, including within DOD's intelligence components, as opposed to coordinating authority. Through arduous "sausage-making" and relatively quick negotiations, lawmakers produced statutorily vague authorities that traded away the DNI's ability to direct budgetary authority across the entire IC, including DOD, and left the CIA a subordinate but independent agency with duties to report to the DNI without explicit directing authority.

These statutory developments were what led President Bush's first choice to serve as DNI, Robert Gates, to turn down the position. In discussions with the White House over the post, Gates noted that the "legislation weakened the leadership of the community" and that "instead of a stronger person, you ended up with a weaker person because the DNI had no troops and no additional powers really on the budget, hiring, and firing."[7] Gates noted that success would require the President to "make explicit publicly that the DNI is head of the Intelligence Community, not some budgeter or coordinator," and that "[t]he position's only prayer of success is for the president to say plainly...how he sees the job. Without his explicit mandate...the endeavor is doomed to fail."[8]

One of the two DNIs confirmed by the Senate during the Trump Administration, John Ratcliffe, acknowledged that Gates's theoretical concerns became the practical reality that he inherited:

> Prior DNIs were the head of the IC only on paper and were routinely accustomed to yielding IC actions and decisions to the preferences of the CIA and other agencies. My ability to begin reversing that capitulation was accomplished solely because President Trump made it repeatedly clear to the entire national security apparatus that he expected all intelligence matters to go through the DNI.[9]

To help further the legislative intent behind IRTPA, DNI Ratcliffe advised during the transition of incoming Biden DNI Avril Haines that the DNI should be the only Cabinet-level intelligence official.[10] While his recommendation was adopted and has corrected the previously allowed imbalance by making the DNI the only Cabinet official and head of the IC at the table, the ODNI's effectiveness and direction leave much to be desired.

A conservative President must decide how to empower an individual to oversee and manage the Intelligence Community effectively. To be successful, the DNI and ODNI must be able to lead the IC and implement the President's intelligence priorities. This includes being able to exercise both budget and personnel authority and being able to rely on timely, useful feedback from subordinate components of the IC, many of which are located within other Cabinet agencies.

The ODNI needs to direct, not replicate in-house, the other IC agencies' analytic, operational, and management functions. Considerations like mismanagement of human resources, joint-duty assignments, and accelerated growth in senior personnel can cause a President to dictate to his incoming DNI a desire to slash redundant positions and expenditures while simultaneously giving the DNI the authority to drive necessary changes throughout the IC to deal with the nation's most compelling threats, including those emanating from China. As John Ratcliffe has noted, "These are essential to the DNI having the abilities and authorities to effectively direct, coordinate, and tackle the immense national security challenges ahead for the Intelligence Community as intended under IRTPA."[11]

Otherwise, other Cabinet and subordinate IC agencies will continue to regard the ODNI as an annoyance and not as a positive contributor to the National Intelligence Program (NIP) budget. They will continue to work around or circumvent ODNI leadership decisions with appropriators and the Office of Management and Budget (OMB) or seek to wait out an Administration or DNI to prevent a policy or intelligence priority from reaching fruition.

Intelligence and interagency coordination has improved significantly since 9/11. Nevertheless, interagency rivalries and festering issues continue to cause duplication of effort on intelligence analysis and technology purchases as well as overclassification and ever-increasing compartmentalization. Additional issues include the abuse of mandated onboarding approval and reciprocity timelines by some agencies, recruitment and retention failures, and a lack of will to remove underperforming or timely adjudicate the misconduct of senior managers and other employees.

Finally, future IC leadership must address the widely promoted "woke" culture that has spread throughout the federal government with identity politics and "social justice" advocacy replacing such traditional American values as patriotism, colorblindness, and even workplace competence.

EXECUTIVE ORDER 12333

IRTPA was passed in the aftermath of the 9/11 attacks against the homeland. It was intended to improve the sharing of information among the elements of the IC, recognizing that the nature of the threats we now face blurs the lines between foreign and domestic intelligence in detecting and countering national security threats against the homeland. An equally important objective in passing the most significant intelligence reform since the National Security Act of 1947[12] was creation of the position of DNI, charged with assuming two of the three principal roles that formerly belonged to the Director of Central Intelligence (DCI): serving as principal intelligence adviser to the President and leading the IC as an enterprise.

Nearly two decades later, the DNI's record of effectiveness in improving the sharing of information and operating the IC as an enterprise is mixed. Implementation of the DNI's roles as leader of the IC and principal intelligence adviser to the President has been challenging. However, despite flaws in the legislation and intelligence agencies' bureaucratic jockeying that undermine the DNI, it is impossible to know what would emerge if Congress were to revisit the act. Seeking a legislative solution therefore might carry with it more risks than benefits. Instead, an incoming conservative President's immediate focus should be on modifying Executive Order 12333, the President's direction for implementing IRTPA.[13]

Executive Order 12333 was last amended on July 30, 2008, by President George W. Bush.[14] The revisions were aligned with IRTPA with significant emphasis on having the IC address the threats to the homeland from international terrorism and the proliferation of weapons of mass destruction. There is scant mention of cyber threats and the evolving national security challenges posed by China, Russia, and other U.S. adversaries. By extension, the revised order fell short of stipulating how the DNI would execute his authority to organize the IC in a manner that improves the delivery of timely intelligence to a wide array of customers.

Executive Order 12333 should be amended to take account of the changing landscape of threats and improve the functional aspects of America's intelligence enterprise. To that end, a revised order should:

- **Address the threats to the United States and its allies in cyberspace.** These threats range from cyberwarfare to information operations. The amended order should clearly delineate the roles and responsibilities of the various U.S. government cyber missions, including the recently created National Cyber Director's Office and power centers at the NSC, while protecting the privacy and civil liberties of U.S. citizens.

  Under the DNI's direction, the cyber mission should explicitly identify how information in the cyber domain will be shared promptly with the warfighters, from law enforcement agencies to the broader IC and state,

local, and tribal elements. The order should consider stipulating what to do with DOD cyber agencies, most notably the NSA, in terms of strategic (for example, the President and the DNI) vs. tactical support (for example, support for the warfighter) in conjunction with ongoing congressionally mandated reviews of the future dual-hatted relationship.

- **Enhance the DNI's role in overseeing execution of the National Intelligence Program budget under the President's authority.** This should be done in a manner that is consistent with Congress's intent as embodied in IRTPA. Under the executive order as written today, the DNI "shall oversee and direct the implementation of the National Intelligence Program." In practice, the DNI's authority to oversee execution of the IC's budget remains constrained by an inability to address changing intelligence priorities and mandate the implementation of appropriated NIP funding to higher intelligence priorities.

  The DNI should have the President's direction to address emerging but catastrophic threats such as those posed by bioweapons. Clarifying how much budget authority the DNI has in conjunction (within the limits of congressional appropriations) with OMB and IC-member Cabinet officials to move around money and personnel is crucial, but positions will not always be fungible. It will probably be necessary to hold IC leadership accountable at intransigent agencies and to restructure areas through executive orders in close conjunction with OMB, as needed.

- **Clarify the DNI's role as leader of the IC as an enterprise in building the IC's capabilities around its open-source collection and analytic missions.** The exponential growth in open-source information, often called OSINT, is not disputed. In the IC, the use of publicly available information, notwithstanding the authorities within IRTPA for the DNI to manage OSINT, remains disaggregated. The explosion of private-sector intelligence products and expertise should signal to IC leadership that duplicative efforts are unnecessary and that limited resources should be focused on problematic collection tasks.

  The IC should avoid duplication of what is already being done well in the private sector and focus instead on complex questions that cannot be answered by conventional and frequently increasing numbers of commercial tools and capabilities. If necessary, for lack of results from the National Open Source Committee, the DNI should appoint the Principal Deputy Director of National Intelligence (PDDNI) as chairman to prioritize and promote accountability for the IC's 18 agencies toward this effort.

- **Prioritize security clearance reform.** Security clearance reform has made significant progress under Trusted Workforce 2.0, a governmentwide background investigation reform that was implemented beginning in 2018 with the goal of creating one system with reciprocity across organizations. This included allowing movement from periodic reinvestigations toward a Continuous Vetting (CV) program with automated records checks, adjudication of flags, the "mitigat[ion of] personnel security situations before they become a larger problem," or the suspension or revocation of clearances.[15] However, human resources onboarding operations in major agencies such as the CIA, FBI, and NSA remain to be resolved.

  As executive agent for security clearances, the DNI must require results from agencies that resist implementation, enforce the 48-hour reciprocity guidance, and target human resources operations that fail to attract and expediently onboard qualified personnel. Additional "carrots and sticks" from executive order reform language, including moving the Security Services Directorate from NCSC to ODNI with elevated status, may be necessary. It is unacceptable for agencies to hinder opportunities for cross-agency assignments, use public–private partnerships inefficiently because of constraints on the transferability of security clearances, and lose future talent because of extraordinary delays in backend operations. Proper vetting to speed the onboarding of personnel with much-needed expertise is vital to the IC's future.

- **Ensure the DNI's authority.** The DNI's authority should be similar to an orchestra conductor's. An incoming conservative President will appoint whomever he chooses as DNI, but there should be agreement between the incoming DNI and President with advice and counsel from the Presidential Personnel Office on selecting positions overseen by the DNI throughout subordinate agencies, as well as concurrence by relevant Cabinet officials and the CIA. This exists by executive order, but many Presidents, PPOs, and Cabinet agency heads do not follow executive order guidance and necessary norms. The importance of trust, character, and the ability to work together to achieve a joint set of intelligence goals established by the President cannot be overstated: It is a mission that can be accomplished only with the conductor and his orchestra playing in sync.

- **Provide additional support for such economic and supply chain–focused agencies as the Department of Commerce.** Information sharing and feedback can help subagencies like the Commerce Department's Bureau of Industry and Security to improve their understanding of the

threat from China and thereby counter it more effectively. They can also aid the development of export control mechanisms and potential outbound investment screening where necessary. Brief, specific governance language should be considered that would apply counterterrorist authority models to the broader functions of the U.S. government insofar as they are needed to counter 21st century nation-state threats.

The success of any DNI rests with support from the President. Any revised Executive Order 12333 must serve to express unequivocal support for the DNI in executing the mandates that an amended order would provide.

CENTRAL INTELLIGENCE AGENCY (CIA)

The CIA is a foreign intelligence collection service tasked with collecting human intelligence (HUMINT), providing all-source intelligence analysis and reporting, and conducting covert action when required to do so by the President. The CIA has its roots in the Office of Strategic Services (OSS), which the United States established during World War II as a paramilitary and intelligence collection organization. After World War II, President Harry Truman disbanded the OSS, and the CIA was established in law by the National Security Act of 1947.

As with every agency in government, the President's election sets a new agenda for the country. Public servants must be mindful that they are required to help the President implement that agenda while remaining apolitical, upholding the Constitution and laws of the United States, and earning the public trust. The President requires a CIA that provides unbiased and apolitical foreign intelligence information and, when necessary, can act capably and effectively on any covert action findings.

Executing the Mission. The CIA's success depends on firm direction from the President and solid internal CIA Director–appointed leadership. Decisive senior leaders must commit to carrying out the President's agenda and be willing to take calculated risks. Therefore:

- The next President-Elect and incoming Presidential Personnel Office should identify a Director nominee who can foster a mission-driven culture by making necessary personnel and structural changes.

- The President-Elect should choose a Deputy Director who, without needing Senate confirmation, can immediately begin to implement the President's agenda. This includes halting all current hiring to prevent the "burrowing in" of outgoing political personnel. Additional appointees should be placed within the agency as needed to assist the Director in supervising its functioning.

- The Director and Deputy Director should request briefings on all CIA activities and presence overseas, as well as any CIA-controlled access programs and existing covert action findings, without exception.
- The Director and Deputy Director should meet with all directorates and mission centers, prioritizing those that are aligned most closely with the President's priorities and calibrating collection and operations based on the President's intelligence requirements. This includes any areas where the CIA might be conducting its own diplomacy parallel to official State Department policy. It must be clear that the CIA's liaison relationships overseas must follow and not contradict those set at the policy level by the President through the State Department.

The other principal offices responsible for executing the CIA's mission include the Directorate of Operations, Directorate of Analysis, Directorate of Science and Technology, Directorate of Support, and Directorate of Digital Innovation. If senior leadership finds any program or operation to be inconsistent with the President's agenda, the Director should immediately halt that program or operation.

Reining in Bureaucracy. The CIA's bureaucracy continues to grow. Because mid-level managers lack accountability, there are areas in which personnel are not responsive to any authority, including the President. The President should instruct the Director to hire or promote new individuals to lead the various directorates and mission centers. This new crop of mid-level leaders should carry out clear directives from senior CIA leadership, which means more accountability and new ways of thinking to benefit the mission.

In addition, the President should task the Director with significantly broadening recruitment, expediting onboarding practices, and shifting resources away from headquarters, including terminal generalist GS-15s when OPM buyouts, forced rotations, or up-and-out personnel policies are set for particular positions. The CIA must find creative ways to align mission requirements with hiring needs, recruit diverse sets of individuals with unique backgrounds, and become more open to hiring private-sector experts directly into senior positions. In addition, the Director should break the cabal of bureaucrats in D.C. by permanently moving various directorates, such as Support and Science and Technology, out of Virginia and possibly open campuses outside of D.C. where analysts and other experts could contribute virtually.

Redirecting Resources. Certain CIA employees and offices have focused on promoting divisive ideological or cultural agendas and fostering a damaging culture of risk aversion and complacency. As soon as possible, the Director should divert resources from any activities that promote unnecessary and distracting social engineering. The Director should implement changes in promotion criteria

that reward individuals for creative thinking and quality of recruitments and products rather than numeric metrics or the achievement of benchmarks that are not essential to the mission.

Not all careers in espionage are created equal, and the Director should incentivize and reward applicants who are willing to accept high risks over those who are climbing the ranks simply by doing business as usual. The Director should refocus the CIA to an OSS-like culture and mandate that all CIA employees acquire, as a condition of securing senior (GS-14+) rank, additional or enhanced language skills, technical or cyber expertise, or field training or serve in overseas assignments.

COVERT ACTION

Covert action can be a valuable tool in helping further the President's foreign policy agenda if implemented in concert with other forms of government power. As codified in the U.S. Code, "the term 'covert action' means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly...."[16]

The President initiates a covert action with a written finding that explains why "such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States."[17] The statute assumes the President will use the CIA as the principal action element to achieve the objectives of covert action findings; however, the President need not feel constrained to utilize only the CIA: "[E]ach finding shall specify each department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in such action."[18]

For example, the Department of Defense maintains certain clandestine capabilities under Title 10 authorities that may resemble but far exceed in scale similar capabilities outside of DOD. Generally, such DOD capabilities can be employed outside a combat theater only if they are determined to be traditional military activities. In practical terms, this means that many DOD capabilities, including those in the space and cyber domains, can be employed only after the initiation of armed conflict.[19] Given the range of global threats the United States faces today, the President should consider whether DOD's complete set of capabilities should be used to support potential covert actions.

The problem, unfortunately, is that certain elements in the State Department, IC, and DOD trade on risk aversion or political bureaucracy to delay execution of the President's foreign policy goals. A future conservative President should therefore identify individuals on the transition team who are familiar with the implementation of covert action with a view to placing them in key NSC, CIA, ODNI, and DOD positions. These knowledgeable teams can assist in any review of current covert actions and, potentially, planning for new actions.

Immediately after the inauguration, the President should task the NSC's Senior Director for Intelligence Programs with conducting a 60-day review of any current covert action findings, including their effectiveness; evaluating new covert actions that might be needed to implement the President's foreign policy goals; and reporting back to the President. Such an assessment should be conducted independently of the agencies responsible for the actions under review. As part of the review, the Senior Director for Intelligence Programs should identify which departments or agencies, such as the CIA or DOD, are best equipped to achieve the objectives set out in new and existing findings.

After the 60-day review, the President should demand creative thinking and a clear strategy as to how covert action fits within the President's broader foreign policy strategy, to include possibly modifying or rescinding any current findings, drafting new findings, and streamlining or eliminating needless bureaucracy, particularly at State, to facilitate more expeditious decisions on tactical covert action. Careful thought should be given to the metrics by which the effectiveness of covert action programs will be measured to ensure the appropriate use of government resources and to guard against the possibility of covert action's being used with little scrutiny in ways that are inconsistent with overt foreign policy goals.

ODNI AND CIA ORGANIZATIONAL RECOMMENDATIONS

The ODNI and CIA operate under authority provided by the Central Intelligence Agency Act of 1949,[20] which means they have greater latitude than the rest of the federal government with respect to the hiring and firing of personnel. Both organizations and other areas of the IC have struggled from a human resources and talent management standpoint to recruit, onboard, and maintain personnel in a timely fashion to fill the IC's ever-changing needs. At a time when the Intelligence Community needs significantly more personnel with the proper technical, language-capable, and diverse backgrounds, including applicants from elements of the business community, the incoming Directors of both agencies need to make this effort a top priority.

Past DNIs' Chiefs of Staff and additional front-office staff historically have come from outside the IC, commonly under a misconstrued "staff-reserve" structure that is intended to avoid a Schedule C designation within the IC. The Director should handpick qualified, properly cleared personnel for front-office and managerial leadership positions, such as the DNI's Chief of Staff and heads of Legislative Affairs and Strategic Communications, to oversee those divisions with career IC staff reporting to them.

The incoming DNI and CIA Director should also consider changes in the Senior National Intelligence Service (SNIS)/Senior Intelligence Services (SIS). Senior officers should be required to sign mobility agreements that allow ODNI and CIA leadership to move them within the IC every two years if necessary. Many qualified

and distinguished senior officers serve throughout the IC, but some long-serving generalist officers no longer perform at a high capacity, are management-driven, do not serve the IC's changing needs, and limit junior officers' prospects for growth and advancement. An incoming Administration should consider studying and implementing additional requirements as a condition for promotion to GS-15/SNIS/SIS and explore concepts such as "Up and Out" beginning at the GS-14/15 levels and above for some fields.

The IC should evaluate areas of bloat and underperforming cadre and work with OPM on authority for voluntary separation buyouts. Allowing ODNI and CIA leadership to shrink size and reduce duplication of effort while promoting healthy turnover within their senior ranks would encourage new ideas and perspectives from mid-career officers and, potentially, from employees hired from outside their agencies. The ODNI and CIA should maximize their direct-hire and incentive-building authorities to bring in talented and properly cleared individuals to serve in positions requiring technical, language, and cyber expertise.

Finally, the human resources and talent management systems for onboarding purposes at the ODNI, CIA, and some other elements of the IC are fundamentally broken. For example, according to current CIA Director William Burns, it recently took more than 600 days, on average, for a CIA applicant to receive his or her necessary security clearance.[21] Although security clearance procedures have been somewhat improved in recent years and Burns has committed CIA to reducing that to no more than 180 days, degradation in other areas of the process has limited the IC's capacity to attract qualified and needed expertise.

PREVENTING THE ABUSE OF INTELLIGENCE FOR PARTISAN PURPOSES

The intelligence function must be protected from bottom-up and top-down politicization if it is to play its proper role in our national security decision-making process. Unfortunately, both types of politicization have occurred recently to the detriment of the Intelligence Community's reputation and credibility. More important, the politicization of intelligence risks contributing to policy failures (as we saw with the Iraq War) or even undermining our democratic system here at home.

In particular, the IC must restore confidence in its political neutrality to rectify the damage done by the actions of former IC leaders and personnel regarding the claims of Trump–Russia collusion following the 2016 election and the suppression of the Hunter Biden laptop investigation and media revelations of its existence during the 2020 election. But the problem is not confined to the executive branch struggle between the IC and policymakers; it also relates to the IC's relationship with Congress as evinced by DNI James Clapper's failure to answer honestly in response to congressional questions about government surveillance programs.

The ODNI and CIA are undergoing a crisis of confidence based on several factors. First, President Barack Obama's CIA Director, John Brennan, gravely damaged the CIA by minimizing the Directorate of Operations and exploiting intelligence analysis as a political weapon after he left office. Brennan's role in the letter signed by 51 former intelligence officials before the 2020 election is unclear, but in dismissing the Hunter Biden laptop as "Russian disinformation," the CIA was discredited, and the shocking extent of politicization among some former IC officials was revealed.

Restoring respect for the IC as an independent provider of information and analysis while also ensuring that it is responsive to the legitimate needs of policymakers will require reinforcing essential norms and institutions. However, we should also recognize that achieving the perfect balance that avoids the pathologies of too much distance or too much closeness and responsiveness to policymakers is not only difficult, but probably impossible.[22] Thus, given the very nature of the business and the political process, much will depend on the promotion of certain norms or virtues on both sides of the principal–agent relationship. Specifically:

- The DNI and CIA Director should use their authority under the National Security Act of 1947 to expedite the clearance of personnel to meet mission needs and remove IC employees who have abused their positions of trust. An area of particular concern is that personnel under investigation for improprieties have been allowed to retire before internal investigations have been completed. Directors of both agencies must instill further confidence in their workforces, Congress, and the American people that they can and will deal effectively with personnel that fail to live up to their oath to the Constitution, adhere to ethical and moral standards as expected by America's taxpayers, and faithfully execute the law.

- The President should direct the DNI and the Attorney General, by direction of the respective Inspectors General and IC Analytic Ombudsman, to conduct a further audit of all IC equities of past politicization and abuses of intelligence information. For example, a recent IC ombudsman analysis during the 2020 election cycle noted, "If our political leaders in the White House and Congress believe we are withholding intelligence because of organizational turf wars or political considerations, the legitimacy of the Intelligence Community's work is lost."[23]

- The President should immediately revoke the security clearances of any former Directors, Deputy Directors, or other senior intelligence officials who discuss their work in the press or on social media without prior clearance from the current Director. IC agencies, including the CIA, should minimize their public presence and vigorously investigate any and all leaks

of information, classified or otherwise. The ODNI and CIA should fire or refer for prosecution any employee who is suspected of leaking information, and penalties should include the removal of pension benefits for those who are found guilty. Additional tools are needed to prevent leaked intelligence from being used as a weapon in policy debates by IC leaders or decision-makers in the executive branch or Congress.

- In addition, the Department of Justice should use all of the tools at its disposal to investigate leaks and should rescind damaging guidance by Attorney General Merrick Garland that limits investigators' ability to identify records of unauthorized disclosures of classified information to the media. Personnel have sufficient access to legitimate whistleblower claims under protections provided by Inspectors General and Congress. The Director and IC must prioritize hiring additional counterintelligence and security personnel to assist in this effort.

- Military and civilian IC training should include stronger emphasis on the norm of political neutrality, including a mandatory course on professionalism and repercussions for abuse in the execution of duties in all degree programs at the National Intelligence University.

- Intelligence leaders need to model norms of neutrality and respect for the decision-making authority of the President, appointed officials, and Congress. This includes building trust with key decision-makers by not using their positions and privileged access to information to influence policymaking indirectly or directly in an inappropriate fashion (especially by engaging in threat inflation). IC leaders should practice extreme restraint in engaging with the public and the media. They should seek to work in the shadows rather than in the limelight. Potential restrictions on such appearances could supplement this norm, preventing political leaders from using IC officials to support an Administration position as they do with military leaders.

- Retired IC leaders should similarly support the neutrality norm by not becoming public figures.

- Congress should not use IC leaders as pawns in policy struggles with the President or the other party during their appearances before committees of the House and Senate. While Congress has a proper oversight role, it should distinguish between information that needs to be public and information that should be discussed in private with members of the IC. A DNI should call "balls and strikes" to those on both sides of the aisle on Capitol

Hill who attempt to weaponize the use of selective intelligence to feed political narratives.

- Political leaders should avoid "manipulation-by-appointment," a practice by which intelligence leaders are selected for their policy views or political loyalties instead of their skilled expertise.[24] Presidents should also avoid public rebukes and pressure from the intelligence profession, which can include intimidation and bullying, to shape IC analysis. This will be easier if IC leaders live by the norms of neutrality and thus are not seen as political actors, for whom political responses are deemed necessary.

- Intelligence leaders and professionals should never "cook the books" for Presidents or change or shape their analysis to preserve access or status.[25]

FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA)

A future President should understand the importance of FISA[26] while also seeking reforms and accountability for any abuses of its authorities. When discussing FISA and what changes may need to be made, it is important to note and recognize that there are stark differences among the individual FISA authorities.

Section 702 of FISA, for example, allows the IC to target foreign terrorists, spies, cyber hackers, and other bad actors (but only if they are non-U.S. persons) when their communications pass through the United States. While this authority may lapse if Congress does not resolve the issue by the end of 2023, Section 702 should be understood as an essential tool in the fight against terrorism, malicious cyber actors, and Chinese espionage. These are two major national security priorities for an incoming President, and it is imperative that the need to use properly maintained and accountable authorities to counter these challenges be recognized.

Section 702 is a vital program that often provides the lion's share of intelligence used in the President's Daily Brief (PDB).[27] An independent review by the Privacy and Civil Liberties Oversight Board (PCLOB) found that it was not abused. Nevertheless, Congress should review the PCLOB's upcoming 2023 report to help it determine whether any reforms or codification of recent administrative changes in FISA processes are needed.

Other authorities in Title I and Title III, often referred to as "traditional" FISA, have elicited valid concerns about the politicization of intelligence collection authority in recent years. When seeking surveillance of Trump campaign adviser Carter Page, for example, the FBI and the Department of Justice concealed vital information from a specialized court and submitted applications that were riddled with errors. An incoming conservative President should consider reforms designed to prevent future partisan abuses of national security authority. A package of strong provisions to protect against such partisanship might include:

- Stiffer penalties and mandatory investigations when intelligence leaks are aimed at domestic political targets,
- Tighter controls on otherwise lawful intercepts that also collect the communications of domestic political figures,
- An express prohibition on politically motivated use of intelligence authorities, and
- Reforms to improve the accountability of the Justice Department and the Foreign Intelligence Surveillance Court.

To keep intelligence credentials from being used for partisan purposes, former high-ranking intelligence officials who retain a clearance should remain subject to the Hatch Act after they leave government to deter them from tying their political stands or activism to their continuing privilege of access to classified government information. The IC should be prohibited from monitoring so-called domestic disinformation. Such activity can easily slip into suppression of an opposition party's speech, is corrosive of First Amendment protections, and raises questions about impartiality when the IC chooses not to act.

CHINA-FOCUSED CHANGES, REFORMS, AND RESOURCES

The term "whole of government" is all too frequently overused, but in responding to the generational threat posed by the Chinese Communist Party, that is exactly the approach that our national security apparatus should adopt. CIA Director William Burns has formally established a China Mission Center focused on these efforts, but it can be successful only if it is given the necessary personnel, cross-community collaboration, and resources. That is uncertain at this point, and just how seriously the organization is taking the staffing of the center is unclear.

A critical strategic question for an incoming Administration and IC leaders will be: How, when, and with whom do we share our classified intelligence? Understanding when to pass things to liaisons and for what purpose will be vital to outmaneuvering China in the intelligence sphere. Questions for a President will include:

- What is our overarching conception of the adversarial relationship and competition?
- How does intelligence-sharing fit into that conception?

Some Members of Congress have said that intelligence relationships such as the Five Eyes[28] should be expanded to include other allies in the Asia–Pacific in, for example, a "Nine Eyes" framework. This fails to take into account the fact that any blanket expansion would necessarily involve protecting the sources and methods of a larger and quite possibly more diverse group of member countries that might or might not have congruent interests. That being said, however, a future conservative President should consider what resources and information-sharing relationships could be included in an ad hoc or quasi-formal intelligence expansion (for example, with the Quad) among nations trying to counter the threat from China.

Significant technology, language skills, and financial intelligence resources are needed to counter China's capabilities.[29] The IC was caught flat-footed by the recent discovery of China's successful test of a nuclear-capable hypersonic missile. No longer can America's information and technological dominance be assumed. China's gains and intense focus on emerging technologies have taken it in some areas from being a near-peer competitor to probably being ahead of the United States. China's centralized government allocates endless resources (sometimes inefficiently) to its strategic "Made in China 2025" and military apparatuses, which combine government, military, and private-sector activities on quantum information sciences and technologies, artificial intelligence (AI), machine learning, biotechnologies, and advanced robotics.

The IC must do more than understand these advancements: It must rally nongovernment and allied partners and inspire unified action to counter them. In addition, to combat China's economic espionage, authorities and loopholes in the Foreign Agents Registration Act (FARA)[30] will have to be examined and addressed in conjunction with the Attorney General.

Many issues within the broader government can be tied back to a more general congressional understanding of the threat due to the compartmentalization of committee jurisdictions and the responsibilities of executive agencies to brief on the nature of the threat. Broader committee jurisdictions should receive additional intelligence from IC agencies as necessary to inform China's unique and more comprehensive threat across layers of the U.S. government bureaucracy and economy.

Former DNI John Ratcliffe increased the intelligence budget as it related to China by 20 percent. "When people ask me why I did that," he explained in an interview, "I say, 'Because no one would let me increase it by 40%.' I had an $85 billion combined annual budget for both the national intelligence program and military intelligence program. My perspective was, 'Whatever we're spending on countering China, it isn't enough.'"[31] From an intelligence standpoint, the need to understand Chinese motivations, capabilities, and intent will be of paramount importance to a future conservative President. It is therefore also of paramount importance that the "whole of government" be rowing together.

NATIONAL COUNTERINTELLIGENCE AND SECURITY CENTER (NCSC)

The Senate Select Committee on Intelligence (SSCI) has taken a keen interest in possibly updating the codified language underpinning much of the nation's counterintelligence apparatus. "Spy vs. spy" threats continue to exist, but the rise of China and (to an extent) Russia's machinations move beyond the governmental sphere to technological, economic, supply chain, cyber, academic, state, and local espionage threats at a level our country has never seen. The asymmetric threat includes cyber, nontraditional collection, and issues involving legitimate businesses serving as collection platforms.

Barring statutory changes that could occur before 2025, a future conservative President should further empower and resource the IC by executive order or through suggested changes in the Counterintelligence Enhancement Act (CEA) of 2002.[32] NCSC was given some authority for outreach efforts on behalf of the IC for counterintelligence education, insider threats, and broader U.S. government best practices, but there remain significant deltas between Title 50 and non–Title 50 entities' protections. Primary operational elements should remain at the FBI and CIA, with the Bureau and NCSC collaborating on nongovernmental outreach.

While there is no need to create a separate agency, a future President and DNI should amplify NCSC's authorities and roles with respect to counterintelligence strategy, policy, outreach, and governance, including supporting necessary Joint Duty Assignments (JDA) for FBI and CIA personnel. At the same time, the FBI requires significant additional resources and legal authorities to fulfill its statutory role as the lead operational counterintelligence agency in dealing with the ever-growing threats posed by our adversaries. The CEA should be updated to include foreign espionage efforts aimed at universities.

Corporate America, technology companies, research institutions, and academia must be willing, educated partners in this generational fight to protect our national security interests, economic interests, national sovereignty, and intellectual property as well as the broader rules-based order—all while avoiding the tendency to cave to the left-wing activists and investors who ignore the China threat and increasingly dominate the corporate world. Reinstitution of the National Security Higher Education Advisory Board and the National Security Business Alliance Council should be prioritized with leadership from the NCSC, the FBI, or a combination of both entities.

When the CCP steals at least $400 billion–$600 billion in intellectual property each year, it is time to devote some strategic thinking to exactly how and to what degree counterintelligence efforts can help to protect America's commercial endeavors. If Chinese strategic technology gains are happening almost entirely in transnational commercial space, for example, and the private sector is also gathering and analyzing some critical intelligence, these essential data points should assist in national-level counterintelligence efforts.

The NCSC was created in the aftermath of 9/11 as the Terrorist Threat Integration Center (TTIC), which later became the National Counterterrorism Center (NCTC) pursuant to President George W. Bush's Executive Order 13354.[33] The NCTC was an organization of approximately three dozen detainees from across the U.S. government with a mandate to integrate counterterrorism intelligence and missions, including terrorist screening. Eventually:

> In November 2014 the Director of National Intelligence (DNI) established NCSC by combining [the Office of the National Counterintelligence Executive] with the Center for Security Evaluation, the Special Security Center and the National Insider Threat Task Force, to effectively integrate and align counterintelligence and security mission areas under a single organizational construct. The Director of NCSC serves in support of the DNI's role as Security Executive Agent (SecEA) to develop, implement, oversee and integrate personnel security initiatives throughout the U.S. Government.[34]

NCSC has added value in such areas as fusing cross-community intelligence for terrorism watchlisting purposes and improving information sharing while carrying roughly half of the overall cadre for the ODNI. An incoming Administration should focus NCTC on integrative tasks, many of which cannot be carried out elsewhere in the IC, but should not use personnel and resources for redundant analyses that duplicate the work of such other IC entities as the FBI and CIA.

ADDITIONAL AREAS FOR REFORM

Analytical Integrity. The "tradecraft" of intelligence analysis is mostly a collection of lessons learned over decades about what works and does not work in a profession whose high-stakes work is performed by thousands but that also bears little outside scrutiny and provides few metrics by which to gauge success or failure on a regular basis. These lessons have accumulated from:

- The perceived misuse of intelligence by consumers as was the case with respect to war-related assessments in the Johnson and Bush Administrations;
- Failures such as the failures to warn of the collapse of the Soviet Union and the specific threat of 9/11;
- Successes in piecing together tactical and often technical puzzles such as estimates of Iranian nuclear program maturation; and
- Strategic victories such as anticipating critical geopolitical developments that have been years in the making.

Historically, this tradecraft has been passed on in the form of unwritten rules learned on the job and in agency-specific training classes, but increasingly since the intelligence reforms of 2004, they have been codified IC-wide under the direction of the Deputy Director of National Intelligence for Mission Integration.

A RAND study of U.S. intelligence tradecraft notes that the "vast majority of intelligence analysts reside outside the Central Intelligence Agency and do work that is tactical, operational, and current."[35] The study goes on to note that the Defense Intelligence Agency (DIA) has as many analysts as the CIA has and that the National Security Agency (NSA) has several times as many analysts, as does the National Geospatial-Intelligence Agency (NGA), indicating both the breadth of the IC's technical collection and its emphasis both on developing analysts who can interpret secret human or technical intelligence in quick-turnaround pieces and on countering tactical, asymmetric threats like terrorism.

During the Cold War, however, there was a more balanced analytic focus with greater emphasis on strategic intelligence issues as a means of outcompeting the Soviet Union. This kind of analysis deals not only in secrets, but also in mysteries—making well-founded but ultimately unknowable predictions about future actions by a competitor or adversary. The tradecraft necessary to succeed in strategic analysis requires substantive regional and topical expertise developed over the years to supplement experience in the daily collection and understanding of secrets. Institutionally, it also requires that agencies' analytic processes be open to discussion, debate, and dissent because analysts must work together to describe a probable range of future outcomes and warn about unproven current threats rather than using the collection to solve a single puzzle with a definitive answer.

Regarding its mission to follow longer-term issues, the IC is falling short in resourcing and in openness to dissenting opinions, which (if taken seriously) can help responsible officials respond more effectively to threats and threat actors. The IC Analytic Ombudsman has expressed concern that hyperpartisanship "has threatened to undermine the foundations of our Republic, penetrating even into the Intelligence Community."[36]

For example, the Ombudsman noted in a report on the IC's handling of election-threat analysis in 2020 that, in his view, CIA officials had deliberately downplayed dissenting views and coordination comments expressed by experts at the National Intelligence Council and elsewhere who felt there was evidence of Beijing's intent to exert at least some influence on the 2020 election as opposed to the consensus view that Beijing did not interfere in U.S. elections. Senior CIA analysts and leaders made it "difficult to have a healthy analytic conversation in a confrontational environment" while violating multiple official IC tradecraft standards. By not allowing dissents or considering alternatives, the CIA exercised "undue influence on intelligence."[37] Subsequent exposure of China-linked online

influence and the FBI's warnings about continued efforts through the 2022 midterms highlight the folly of undue certainty without consideration of alternatives.

On election influence and other controversial issues, such as the origin of COVID-19, analysts at the most powerful intelligence agencies have increasingly tended to use the leeway they have been given to insert their political views into their work in order to influence (if possibly even control) the analytic process. They do this in ways that attempt to squash dissent and impair the creation of a culture in which entrenched views are challenged and unpopular analytical lines can survive or not according to their merits.

To help the United States and its leaders to outcompete China across multifaceted societal, economic, military, and technological threats, the IC's capability to conduct strategic intelligence analysis that is relevant to policymakers in both parties must be rebuilt and strengthened. Because Beijing may be a peer or even exceed U.S. capabilities in some areas, the post-9/11 analytic focus on quick-turnaround secrets is not good enough. Strategic planning—informed by intelligence—must take place for the United States to stay ahead of whatever new threats China may pose.

An incoming conservative President will have the opportunity to signal the demand for such strategic products and prioritize their production through communications to intelligence leaders and formal mechanisms such as shifting priorities within the National Intelligence Priority Framework and structuring the President's Daily Brief. The incoming DNI should also emphasize implementing the recommendations in the Ombudsman's report, especially regarding objectivity, the inclusion of dissenting viewpoints, and more serious efforts to hold senior leaders accountable for backchannel attempts to change or suppress analytic views.

Accounting for the long history of intelligence failures and surprises, an incoming conservative President must appreciate the ambiguity, complexity, limits, and assumptions inherent in intelligence assessments. Intelligence often deals with the human dimension in complex decision systems within a foreign country or organization, and this makes consistently accurate predictions difficult if not impossible to develop. Seeing something and understanding what you are seeing are two different things, so a President should consistently and patiently press the IC about its potential biases, assumptions, methodology, and sourcing.

With regard to election-threat analysis and politically controversial topics, agency leaders should take seriously the Ombudsman's admonition that we need to maintain tradecraft standards across all countries and topics by ensuring that equitable standards apply across all foreign threat actors. Analysis should be put forward without regard to the domestic political ramifications of intelligence conclusions.

"Obligation to Share" and Real-Time Auditing Capability. The federal government has made admirable progress in recent years by being more

forward-leaning in sharing cyber threat intelligence with private-sector partners and the public, emphasizing that the protective nature of such information is of value only if put into the right hands at the right time. Since critical infrastructure and services are overwhelmingly owned, managed, and defended by the private sector in the United States, there has been an increasing emphasis on declassifying intelligence and sharing actionable information with private-sector partners, often through industry-specific Information Sharing and Analysis Centers (ISACs); regional meetings of government and private-sector experts called InfraGard, run by the FBI; direct public notification from the Department of Homeland Security, the FBI, and (increasingly) the NSA; and more discreet one-on-one engagements led by the collecting agencies.

These programs properly recognize the private sector's role in providing cybersecurity for Americans; in practice, however, the intelligence shared by the U.S. government through these venues is too often already known or no longer relevant by the time it makes its way through the downgrade process for sharing. In addition, government-shared information often needs to take advantage of the opportunity to provide contexts, such as attribution, trends, and size of the observed cyber problem. As warranted, additional context should be provided to the private sector as a matter of routine.

To continue improving the U.S. government's ability to defend the country's most vital networks, the IC must adopt an "obligation to share" policy process, including the capacity for "write to release" intelligence products whereby newly discovered technical indicators, targeting, and other intelligence relevant to cyber defense are automatically provided either to the public or to targeted entities within 48 hours of their collection—which is how counterterrorism intelligence has been managed for years when it comes to a "duty to warn." Under this policy, agency heads should still have the flexibility to withhold intelligence for operational or counterintelligence reasons but would need to report regularly to Congress on the number of and justification for exceptions. This policy would make sharing intelligence and defending networks the default, as it already is in the rest of the cybersecurity community outside the IC, to improve the quantity, relevance, and timeliness of defensive information while ensuring accountability for top leaders when they must withhold this information.

One of the most significant challenges within the IC is presented by the need to share information promptly among the 18 elements of the intelligence enterprise. The only long-term solution to the understandable tension between the need to share information and the need to protect intelligence sources and methods is a robust real-time auditing capability that electronically flags unauthorized access. Under an identity management system with real-time audit, even the most sensitive information acquired by America's intelligence agencies can be shared, and the access to and use of that information are appropriately monitored. Establishing

a real-time auditing capability is essential to decreasing the risk for the heads of intelligence agencies in meeting their statutory requirements to ensure that they protect sources and methods associated with the classified information their agencies collect.

Overclassification. There is broad consensus across the U.S. government and among stakeholders that the system for classifying, declassifying, and otherwise marking and handling sensitive information is at a crossroads. Exorbitant amounts of classified data are created daily, and agency personnel often mistakenly choose classification as the default selection to ensure national security. At the same time, the effectiveness of downgraded and carefully declassified information to support foreign policy efforts has been borne out in, for example, alerting the broader world of Russia's buildup and likely plans for its invasion of Ukraine.

Two executive orders principally govern how the U.S. government handles classified and sensitive information.

- Executive Order 13526, "Classified National Security Information," issued in 2009,[38] prescribes the classification levels and procedures for declassification.

- Executive Order 13556, "Controlled Unclassified Information," issued in 2010,[39] aimed to establish a uniform program for managing all unclassified information that requires safeguarding or dissemination controls.

The current system for declassifying classified national security information (CNSI) is extraordinarily analog, requiring experts' review of individual records. Declassification policies are based on human review of paper and need to contemplate and handle the proliferation and volume of digital records created by agencies. The U.S. government will soon reach the point at which manual review is impossible. The declassification of CNSI should support key U.S. national security objectives, reflect mission priorities, and not serve solely as a necessary procedural function. Reforms should include:

- Tighter definitions and greater specificity for categories of information requiring protection.

- More stringent policies to effect significant reductions in the number of Original Classification Authorities (OCAs).

- Stricter accountability measures at the OCA level and more detailed security classification guides.

- Enhanced metrics for accuracy of classification.
- A general simplification of the overall system for the benefit of users.

On the back end, an ODNI-run declassification process that is faster, nimbler, default-to-automated, and larger-scale should be a priority.

Additionally, investments in IT are required to deal with the growing volumes of CNSI collected and produced in the digital age, along with many years' worth of existing analog and digital holdings that could provide valuable historical insights. An incoming Administration needs to explore options to prioritize funding for innovation in declassification management: for example, by establishing a budget line item specifically for the modernization of declassification or designating funding for program classification management as a special-interest item.

The Administration will also need to transition to using technology, including tools and services for managing Big Data (which provide a robust electronic record repository, making information within and across agencies easier to organize and locate and facilitating more rapid review and release capabilities for records of emerging interest); artificial intelligence/machine learning (which, when incorporated into existing business practices, enables machine interpretation of unstructured text and data, applies decision support technology to enable more consistent classification decisions, and expedites reviews between agencies); and expansion of Commercial Cloud services (which facilitate the rapid testing and deployment of new tools and technologies).

However, technology is not a panacea; human expertise in information holdings and routine validation of the technology will always be necessary. With or without machine assistance, agencies will require more people and more varied skill sets to improve their ability to meet the electronic records era's classification and declassification demands and serve an incoming Administration's goals.

Broader U.S. Government and IC Intelligence Needs. Increasingly, conflicts among U.S. adversaries such as China, Russia, Iran, and North Korea are conducted in the realms of technology and finance.[40] This challenge requires new tools, authorities, and technological expertise across the U.S. government, particularly at the Commerce Department's Bureau of Industry and Security (BIS) and the Committee on Foreign Investment in the United States (CFIUS), which is housed at the Treasury Department.

An incoming conservative President should task his DNI and Secretary of Commerce with increasing coordination, the resources needed for BIS and SCIF capacity, and proper and necessary intelligence sharing to counter the activities of multifaceted adversaries such as China. This would include additional work with private-sector expertise, granting clearances to niche sector experts and United States citizen commercial and financial partners as needed.

Cover in the Digital Age. Even in the public domain, it is becoming increasingly clear that protecting the identities of undercover intelligence officers is difficult in the digital age.[41] The truth is that as our daily activities are conducted predominantly in the digital domain, our antiquated system for providing cover to undercover officers has lagged woefully behind the threat from foreign adversaries.

The DIA, CIA, and FBI are increasingly aware of this threat and are devoting resources to the problem. Their back-office infrastructure, however, is such that they are still using methods for providing cover from decades past that put valuable intelligence officers at unnecessary risk. How intelligence officers and their families are taught to use smartphones and social media, travel, conduct banking, and take and share pictures—even how and when they are paid—can make it difficult to protect identities.[42] Legends, fake backstories, and identities are often weak, incomplete, and unable to stand up to a basic Google search.[43] Officers operating under nonofficial cover are offered even less protection and training to help them succeed.

In addition, ubiquitous technical surveillance (UTS) techniques being refined by technologies emanating from the regimes in China and Russia will continue to be highly challenging for intelligence officers. An incoming Administration will need to double down on resourcing and training so that members of the IC will have the expertise they need to operate clandestinely (and successfully) against hard targets.

Privacy Shield. For many years, the European Union (EU) has tried to force U.S. companies operating in Europe to follow its data privacy regulations. Misleading claims in the 2013 Snowden leaks destroyed the initial Safe Harbor Framework[44] that allowed American companies to transfer data across the Atlantic; its successor, the Privacy Shield Framework,[45] was struck down by European courts on the grounds that it provides insufficient protections for EU citizens against hypothetical U.S. government surveillance. Those same European courts exempted the intelligence services of EU member states from the standards applied to the U.S., suggesting that trade protectionism may be the real motive behind data privacy regulations.

In 2022, the Biden Administration negotiated a new agreement, the Trans-Atlantic Data Privacy Framework,[46] intended to withstand European legal challenges. Given the fate of its predecessors, it is not certain that it will survive. Executive Order 14086, "Enhancing Safeguards for United States Signals Intelligence Activities,"[47] implements this new framework by attempting to align signals intelligence collection practices with European privacy regulations. At most, the executive order's changes will be helpful support for the framework in future European litigation; at worst, they could throw sand in the gears of important intelligence programs.

An incoming conservative President should reset Europe's expectations. Brussels has always arbitraged the difference between being a military ally against, for

example, Russia and conducting a full-blown trade conflict with the United States. Restrictions on data exports have been part of the trade conflict, but now they could seriously harm our military and intelligence capabilities. Moreover, restrictions on U.S. intelligence collection hurt the Europeans themselves, especially as the United States shares unprecedented amounts of intelligence on Russia's invasion of Ukraine with Europeans.[48]

Europe is telling the United States to meet intelligence oversight standards that no European country meets. At the same time, exports of data to China are unexamined and (so far) free from legal challenges. That violates World Trade Organization agreements as an arbitrary and discriminatory data protection standard. It is a betrayal by a nominally allied jurisdiction. European court rulings that struck down prior data privacy frameworks were grounded not in constitutional law but in a treaty among European nations. If the EU accepted an international agreement that data may flow to the United States under a more reasonable standard than the one adopted by the court, that interpretation would be binding, at least as a gloss on the earlier treaty.

The United States has never seriously pushed back against the EU; now is the time. An incoming President should ask for an immediate study of the implementation of Executive Order 14086 and suspend any provisions that unduly burden intelligence collection. At the same time, in negotiations with the Europeans, the United States should make clear that the continued sharing of intelligence with EU member states depends on successful resolution of this issue within the first two years of a President's term. It is time for a real solution, not the 30 years of stopgaps imposed by Brussels.

President's Daily Brief (PDB). An incoming conservative President should make clear what the President's Daily Brief is and is not. The PDB should be for the President specifically, with a much narrower distribution and addressing areas of strategic concern. During the transition, the future National Security Advisor, along with the DNI, should conduct a review of current PDB recipients and determine which should remain recipients when the President's term begins.

Instead of being used as the statement of record for the agencies, the PDB often misses the areas of interest for Presidents and their senior advisers. The President should want the PDB to focus on providing the information needed for the often imperfect and complex decisions that a President needs to make, which should always be based on the best intelligence that can be gathered. Where consensus and agreement are possible, an IC-coordinated product is excellent, but insights provided by properly channeled dissent can lead a President to ask relevant questions of his DNI and IC.

A future DNI determines the PDB briefer based on recommendations made by the Deputy Director of National Intelligence for Mission Integration (MI). Historically, briefers have come from the CIA, but a future President and DNI should

consider a primary briefer or a rotation of briefers from other IC elements. Additionally, the entirety of the PDB staff and production should be located at ODNI.

National Intelligence Council (NIC). The National Intelligence Council is the IC's premier analytic organization and includes more than a dozen National Intelligence Officers (NIOs), each of whom leads the IC's analysis within a regional (China, Russia, Iran, etc.) or functional (cyber, counterproliferation, economics, etc.) mission area. This includes authoring National Intelligence Estimates on major strategic issues with the entire IC, overseeing and deconflicting the annual analytic plans of each agency, and weighing in on day-to-day major analytical issues, sometimes individually (for example, by writing the NIC's strategic memos or providing detailed expert briefings to the President before major decisions).

Historically part of the CIA, the NIC was reorganized into the ODNI as was the PDB. It retains the CIA's objective analytic culture and is staffed primarily with CIA officers; however, as many as 25 percent of its NIOs over the decades have come from academia or the private sector, bringing in much-needed outside expertise to collate and understand intelligence with perspective and skills that are not necessarily nurtured within the IC. In recent years, there has been a greater emphasis on encouraging officers from other agencies—particularly the DIA, NSA, and FBI—to serve as NIOs or as their deputies.

To encourage greater analytic independence and debate, the incoming Administration should require that non-CIA officers comprise at least 50 percent of the NIC's membership and that the first-among-equals NIC Chairman is an outsider from one of the three major IC agencies with reporting responsibility to the PDDNI. Opening these senior analytic roles to the best analysts regardless of agency would also encourage the continued maturation of analytic cadres and tradecraft at those agencies and give them an equal voice in interagency analytical disputes, which in turn would give the President access to the best thinking and a variety of sources and perspectives from across the entire IC rather than from the CIA alone.

IC Chief Information Officer. The Intelligence Community Chief Information Officer (ICCIO) directs and oversees all aspects of the classified IT budget for all of the IC's 18 elements. As the DNI's principal adviser for technology, the ICCIO must be well-versed in technology, acquisitions, operations, and intra-agency cooperation to advance our technical prowess and simultaneously direct a bureaucracy that, left unchecked, will serve each element's own preferences. To ensure that procured and implemented technology and policy reflect the Administration's agenda, the ICCIO must have the support of the DNI and possess the ability to command cooperation between and promote interoperability across IC members.

Because of the unique responsibilities entrusted to this position, incumbency has seesawed between political appointees and career civilians; due to its congressionally capped salary, the position is often filled by an SES-level member administratively detailed to support the DNI. At times, the ICCIO is incorrectly

referred to as the ODNI CIO. By law, and to secure unbiased execution across all of the IC's 18 elements, the same individual may not serve as ICCIO and ODNI CIO. They are two distinct positions.

Critical areas and IC IT portfolio priorities for the ICCIO include but are not limited to:

- Transparent accounting and allocation of IT investments across the IC, including commercial cloud computing and storage (C2E);
- Recognized and uniform security access for people, systems, and capabilities to enable interoperability across IC elements;
- 5G/6G data transmission and network interoperability, which is vital to IC element operations;
- Artificial intelligence and machine learning;
- Quantum cryptography and post-quantum encryption (PQE); and
- Cybersecurity infrastructure where Biden Administration changes have realigned and reassigned management oversight and IT architecture responsibilities to NSA and DHS/CISA, conflicting with ICCIO-delineated roles.

An incoming Administration should appoint the ICCIO as a primary member of the DNI staff along with the ODNI General Counsel, IC Chief Financial Officer, and ODNI Chief Operating Officer.

The President-Elect should require immediate reviews of the progress in implementing post-quantum encryption at a minimum for IC and Defense systems but preferably throughout the government. The President's National Security Memorandum specifying "the goal of mitigating as much of the quantum risk as is feasible by 2035"[49] needs to be revised in light of the magnitude of the threat. Accounting for the investment that will be needed to secure IT systems for national security should be a top priority.

ODNI, CIA, and IC Technology Issues. In recent years, the IC has had a mandate from multiple Administrations to advance technology needs for intelligence—needs that have seen massive changes as a result of such threats as China's advancements in technology and data infrastructure. Many of the projects coming out of ODNI and CIA's Science and Technology Directorate (S&T) focus on expensive, AI-driven open-source work, but there is likely duplication of effort in areas where the private sector and entrepreneurs are already making progress.

The Intelligence Advanced Research Projects Activity (IARPA) and S&T should focus primarily on challenging technology problems. Avoiding duplication of what is already being done well in the private sector in such areas as practical defense cyber intelligence and artificial intelligence research would help to focus the agencies on the complex shadow tasks at hand while simultaneously freeing limited resources for advancement in other areas.

President's Intelligence Advisory Board and PIAB Intelligence Oversight Board. The President's Intelligence Advisory Board (PIAB) is charged with providing the President with an independent source of advice on the IC's effectiveness while offering insights into the IC's future plans. The Board is meant to have access to all information needed to perform its functions and to have direct access to the President. The Intelligence Oversight Board is a standing committee within the PIAB. These entities should be tasked with giving independent, informed advice and opinion concerning major matters of national security focused on long-term, enduring issues central to advancing and protecting American interests. This should include taking a broader, deeper look at critical trends, developments, and their implications for U.S. national and economic security relying on unclassified and open-source information.

The Importance of Space. With China developing increasingly capable space and counterspace technologies and Russia taking more aggressive action in space, space has emerged as the latest warfighting domain. In response, the DNI created the Office of the Space Executive (OSX) in 2018 as an experiment to promote greater integration of IC space activities without incurring excessive overhead. The DNI mandated greater collaboration across the enterprise without adding personnel, altering authorities, and increasing budgets.

The Space Executive's design reflects the original design principles of the ODNI. The ODNI was explicitly not designed to be a departmental headquarters with command and control of the 18 agencies' vast bureaucracies. Rather, it was designed to be small and lightweight with a mission to coordinate and integrate the critical activities of the IC's 18 agencies without creating new bureaucracy. That goal should remain in force, and calls by outside entities or Congress to add new centers and layers should be rejected.

The Office of the Space Executive has been recognized as an effective governance model and has spawned similar efforts, including the Election Threats Executive, Economic and Threat Finance Executive, and Cyber Executive. With this in mind, the following initiatives should be pursued:

- **Expand collaboration with partners.** For too many decades, the IC and DOD have acquired and operated satellites independently. To improve their ability to meet the threat posed by China and Russia, the IC and DOD should:

1. Explore new methods for better integrating our space assets,

2. Examine the possibility of joint programs, and

3. Fully utilize unique Title 10 and Title 50 authorities to execute space defense (and offense) strategies jointly.

Additionally, the IC should support building international alliances with like-minded partners beyond the Five Eyes intelligence-sharing nations. Increasingly, potential allied nations (and their commercial companies) are developing innovative space capabilities to augment and strengthen the U.S. space defense and intelligence posture.

- **Refocus space-related intelligence collection.** The IC has developed a space threats collection posture predicated on three assumptions:

1. The best information on developing space threats comes from collection against the adversaries' military institutions on Earth,

2. There should be a clear dividing line between DOD's intelligence activities and the IC's, and

3. Only government-developed "exquisite" capabilities can inform threat analysis and decision-making effectively.

Developments by our adversaries and the emergence of a vibrant commercial space marketplace over the past decade have rendered all three assumptions false and even dangerous. The IC must therefore refocus and invest in methods that will enable it to characterize accurately the threats that already exist in space, not just on the ground; break down barriers to information sharing and collaboration with the DOD; and embrace commercially derived capabilities that can be adapted to a national security mission—all while emphasizing the need to protect critical supply chains and the cybersecurity needs that result from an increasingly government–commercial low Earth orbit.

Our nation's economic and national security depends on being able to advance America's leadership position in space, which is eroding in the face of increasing threats from adversaries and our own inaction.

AN UNFINISHED EXPERIMENT

The Intelligence Community, including specifically the role of the DNI and ODNI, is an unfinished experiment. The envisioned design principle was a conservative one: a small, network-centric model for enterprise coordination as opposed to a large monolithic bureaucracy like DHS. The ODNI, however, has reverted in some ways to a bureaucratic and hierarchical model characterized by limited effectiveness.

Historically, the CIA has undercut the DNI and maintains primacy in the IC hierarchy, especially regarding the White House. An incoming conservative President can right the ship and return the IC governance model to first principles by using a limited but empowered leadership and coordination design to serve the nation's intelligence and national security needs while reclaiming the public trust with fiscal responsibility, political neutrality, personnel accountability, technological prowess, and necessary human capital needed to counter the immense nation-state and asymmetrical threats facing our country.

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. No particular policy statement, reform recommendation, or other view expressed herein should be attributed to any individual contributor or to the author.

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8

MEDIA AGENCIES

U.S. AGENCY FOR GLOBAL MEDIA

Mora Namdar

MISSION STATEMENT

The mission of United States Agency for Global Media (USAGM) is to inform, engage, and connect people around the world in support of freedom and democracy.[1] However, this mission statement does not reflect the current work of the agency. The mission is noble, but the execution is lacking. To fulfill its mission, USAGM should also aim to present the truth about America and American policy—not parrot America's adversaries' propaganda and talking points.[2]

OVERVIEW

Originally formed as the Broadcasting Board of Governors (BBG) in 1994, the BBG changed its name in 2018 to the United States Agency for Global Media. The USAGM is a sub-Cabinet agency of the U.S. government with a budget of just under $1 billion. The agency oversees two government broadcasting networks: the Voice of America (VOA) and the Office of Cuba Broadcasting (OCB). USAGM also oversees 100 percent of the grant funding for several "independent" grantee organizations, including the Middle East Broadcasting Network (MBN), Radio Free Asia (RFA), Radio Free Europe/Radio Liberty (RFE/RL), and the newly formed Open Technology Fund (OTF).[3]

- **The Voice of America** provides news and information in 48 languages to a weekly audience of more than 326 million people worldwide. For more

than 80 years, VOA journalists have supplied news and information about the U.S., audience-specific regions of interest and concern, and the world at large. VOA radio and television signals are broadcast to approximately 3,500 affiliates, and satellite transmissions reach countries where free speech is banned or where civil society is under threat.[4]

VOA uses digital, web, and mobile media as well, which, while sometimes useful in propagating valuable information globally, has created specific violations of the agency's prohibition against broadcasting to the domestic U.S. audience—particularly with regard to flagrantly political content, as has been the practice with recent and current VOA content directors and managers.[5] The network once had a generally well-received brand value, but it has deteriorated under decades of poor leadership and a loss of its once-prized unbiased reporting. There are bright spots within VOA, but mismanagement and declining production values have diluted its once-great reputation as a singular voice in American news broadcasting abroad.

- **The Office of Cuba Broadcasting** oversees Radio and Television Martí, a multimedia hub of news, information, and analysis that provides the people of Cuba with programs through satellite television, radio, and digital media. These programs present news and information about Cuba's oppressive government from the outside world that would otherwise be heavily restricted.[6] The OCB remains a critical avenue of truth to the Cuban people but has been threatened with crippling budget and operational constraints, including empathetic attitudes toward Communist Cuban leadership coupled with organizational hostility toward the OCB by certain elements of USAGM leadership. During the Biden Administration, the OCB has been threatened with closure, while also suffering chilling reductions in force.[7]

- **The Middle East Broadcasting Network** is an Arabic-language news organization with a weekly audience of 27.4 million people in 22 countries in the Middle East and North Africa. The MBN consists of two television networks, radio, websites, and social media platforms. Together, they deliver news and analysis on the region, American policies, and Americana. The MBN has correspondents throughout the Middle East and North Africa.[8]

- **Radio Free Europe/Radio Liberty** is a private, nonprofit, multimedia broadcasting corporation that serves as a surrogate media source in 27 languages and 23 countries, including Afghanistan, Iran, Pakistan, Russia, and Ukraine.

Founded in the early days of the Cold War (Radio Free Europe in 1949 and Radio Liberty in 1953) and merged in 1976, Radio Free Europe and Radio Liberty were intended to execute edgy and daring information operations and unrestricted news reporting deep behind the Iron Curtain. Unfortunately, like other broadcast organizations under USAGM, RFE/RL has surrendered much of its rich history to an approach that favors political trends as opposed to operations that support and represent America abroad. While there are some bright spots within RFE/RL, much of the network has redundant programming with certain VOA language services, often with competing, counterproductive, or dissimilar messaging.

The recent addition of RFE/RL's Hungarian-language service, Szabad Európa, falls outside the intended scope of RFE/RL's charter by targeting a democratically elected, pro-American European and NATO ally.

Not least, RFE/RL has been plagued by several serious espionage-related security risks within its ranks.[9]

- **Radio Free Asia** is a private, nonprofit multimedia news corporation that brings news and uncensored content to people in six Asian countries that restrict free speech, freedom of the press, and access to reliable information. RFA also provides educational and cultural programming, as well as forums for audiences to engage in open dialogue and freely express opinions. RFA utilizes on-the-ground reporters and networks of in-country sources, citizen journalists, and eyewitnesses who provide leads, tips, images, and video.[10]

  Several reports from the Office of the Inspector General (OIG) were released showing waste and self-dealing, including security vulnerabilities and RFA leadership awarding insiders millions of dollars of grant funding.[11] For example, as the OIG stated in one report, the then-president of RFA "established the Freedom2Connect Foundation (Foundation)" and thereafter "awarded two contracts, totaling $1.2 million" to the foundation she herself founded.[12] Furthermore:

  > [The] OIG found that RFA did not comply with Federal procurement requirements for grantees. OIG identified instances in which RFA and its agents did not comply with OMB [Office of Management and Budget] conflict-of-interest procurement requirements for grantees. Specifically, OIG found that RFA entered into 14 contracts, totaling $4.0 million (51 percent of the amount of OTF FYs 2012 and 2013 project-related contracts), with organizations that had some affiliation with either RFA officials or members of OTF Advisory Council.[13]

This same leadership proceeded to wastefully form the Open Technology Fund as its own independent grantee with the help of USAGM senior management prior to the tenure of Trump-appointed leadership.

- **The Open Technology Fund's** goal is to provide funding to support the research, development, and implementation of Internet freedom technologies that circumvent censorship. OTF was formed under dubious circumstances by using consolidation rules to usurp the mission and funding of USAGM's pre-existing Office of Internet Freedom (OIF), which funded far more diverse technologies with much greater transparency. OTF, however, operates with far less transparency and strictly restricts funding to "open source" technology. OTF does not support any technology with even partially "closed source" code, notwithstanding that such closed-source code would provide more protection against hacking.

  Although OTF touts large user numbers, this could not be substantiated upon requests for information, and it was discovered by former senior USAGM leadership that OTF makes extremely small, insubstantial donations to much larger messaging applications and technology to bolster its unsubstantiated claims.[14] Despite its vibrant self-lobbying and publicity efforts, OTF remains a wasteful and redundant boondoggle. Its grantee status was suspended by Trump-appointed USAGM leadership for a number of reasons, including noncompliance with its grant terms and for actions that resulted in several fraud and waste investigations.[15]

  The OIF, which predates OTF, was historically under USAGM's Office of Chief Strategy Officer and for years had been performing the same tasks as OTF within USAGM headquarters for the benefit of all USAGM broadcast networks. With much greater transparency, OIF succeeded with fewer staff while simultaneously fielding more diverse and robust technologies. Absent a meaningful organizational impact analysis to justify the wastefulness of the decision-making process, OTF usurped the entire OIF budget and was set up as a new grantee organization.

  Exacerbating matters, OIF was shut down in order to provide massive grants to the opaque activities of OTF and its founding leadership, who went on a free-spending boondoggle for high-end Washington, D.C., office space, furnishings, and top salaries for its leadership team. Numerous career staff whistleblowers came forward to sound the alarm about OTF to Trump-appointed leadership, citing concerns about the OIG reports, wasteful spending, and other substantive performance matters.[16] Nonetheless, the

Biden Administration reinstated OTF to full operational status and ceased all investigations immediately after assuming office.

ATTEMPTS AT REFORM

Late in the Trump Administration, following the long-delayed Senate confirmation of Michael Pack as USAGM Chief Executive Officer (CEO),[17] agency leadership rapidly initiated long-overdue and necessary reforms,[18] including security reforms repeatedly requested by the Office of Personnel Management (OPM) and the Office of the Director of National Intelligence (ODNI) that had been ignored by USAGM leadership.[19] Unfortunately, as was the case with the OTF, the Biden Administration immediately reinstated personnel who had been fired for gross security violations, placing the agency back into its previously failed posture—one that poses a danger to national security.

The Firewall Saga. The vital error in USAGM's current organizational/cultural calculus is the agency's selective application of a journalistic "firewall." The amorphous interpretation of a firewall shifts, depending on which Administration is in office and who is asking questions.

Although a firewall should ensure journalistic independence, it has been used without formal regulation for decades in order to shirk legitimate oversight of everything from promoting adversaries' propaganda to ignoring journalistic safety. Often, the "firewall" is touted when journalists are either promoting anti-American propaganda that parrots adversarial regime talking points or promoting politically biased viewpoints in opposition to the VOA charter.[20]

Such weak oversight, alien to any other large media network or news organization—particularly one derivative of U.S. foreign policy and national security goals—was erroneously enshrined in a document known as the Firewall Regulation.[21] The Firewall Regulation was entered into the *Federal Register* on the eve of the Senate confirmation of President Donald Trump's USAGM CEO, Michael Pack. It was the quintessential "midnight reg" designed to throttle the statutory and executive authority of the agency head. It stipulated that agency management, by standards unknown to most large broadcast companies, was forbidden from engaging in oversight and direction of content in any way—even false content. It ran counter to the law, including the Smith–Mundt Act,[22] and it was harmful to the agency itself and to the foreign policy and national security goals of the U.S. government.

Even content that went well beyond fair and accurate reporting on U.S. domestic and political problems could not be reined in by front office leadership under the Firewall Regulation. Soon, VOA's White House correspondent was posting content highly critical of, and personally insulting to, the U.S. President—in contradiction of VOA's own journalistic standards, policies, and procedures. USAGM career officials considered such content sacrosanct and bravely independent "journalistic"

content protected by the "spirit of" the Firewall Regulation—despite ample evidence to the contrary.

Late in the Trump Administration, USAGM political leadership, following an intensive U.S. Department of Justice review, revoked the Firewall Regulation over the protests of journalistic organizations—none more vociferous than VOA itself.[23] While the abuses of the Firewall Regulation are particularly disconcerting, they encompass just a fraction of similar overreaches of the agency's journalistic mission.

Current and former USAGM/VOA leadership who wanted to maintain virtually zero accountability and oversight waged a campaign of interference, resistance, and disinformation to stifle change at the agency. Perhaps not coincidentally, various media outlets with relationships to former and future USAGM leadership published near-daily criticisms of Trump Administration appointees and also of grantee organization leaders who were appointed by CEO Pack to implement long-overdue reforms.[24]

Agency Mission Failure. Currently, the USAGM, by and large, is not fulfilling its mission, which remains so ill-defined and ambiguous that it enables the organization to go about its business largely unguided with little to no oversight. Rather than providing news and information in an accurate, reliable way that promotes and supports freedom and democracy, the agency is mismanaged, disorganized, ineffective, and rife with waste and redundancy.

These shortfalls are either oriented toward, or directly contribute to, the agency's media organizations joining the mainstream media's anti-U.S. chorus and denigrating the American story—all in the name of so-called journalistic independence. Indeed, content during the Trump Administration was rife with typical mainstream media talking points assailing the President and his staff. The few bright spots within VOA and the OCB are often stifled instead of supported. Top-level talent often leaves the agency or is met with obstacles rather than support.[25] Opportunities for modernization and effective strategy are ignored, and wasteful spending and misallocation of resources are the norm in an environment in which nepotism is rampant and political gamesmanship protects bad actors.

Amanda Bennett[26] was confirmed as USAGM CEO in 2022 after two years of being blocked by several Members of Congress. Legal advocacy organization America First Legal Foundation even wrote to President Joe Biden asking him to withdraw her nomination,[27] citing several severe national security failures while she was director of VOA.[28] Her tenure as director during the Obama Administration (and her holdover into the beginning of the Trump Administration) was marred with operational failures, security failures, and credibility failures. Those failures are reportedly ongoing during her current tenure as CEO.[29]

NECESSARY REFORMS

Security Issues. The Office of Personnel Management[30] and the Office of the Director of National Intelligence flagged severe security failures during four

extensive investigations of the USAGM, each conducted during a 10-year period between 2010 and 2020.[31] Security personnel and former agency senior leadership ignored these issues and allowed them to persist.[32]

In brief, the USAGM is vulnerable to exploitation by foreign spies. During the last six months of the Trump Administration, known foreign intelligence operatives were removed from the OCB and RFE/RL. During the 10-year period between 2010 and 2020, both the OPM and the ODNI found that the USAGM's Office of Security (under the Office of Management) had grossly ignored and flouted many of the federal government's most critical and long-standing information and personnel security protocols, regulations, and practices.[33]

During the investigative period—in which the findings were largely, if not wholly, ignored by agency senior leadership—over 1,500 USAGM personnel (nearly 40 percent of its total workforce) were performing their Tier 3 and Tier 5 national-security-sensitive positions with falsified and/or unauthorized suitability-for-employment determinations and with access to sensitive federal buildings and information systems. In many cases, records (including Social Security numbers), were falsified or replaced with notional placeholders, and fingerprints (in many dozens of cases) were never submitted to the Federal Bureau of Investigation for basic background investigations.

By the time these issues were addressed by members of the Trump Administration, more than 500 personnel with unauthorized access and clearances had left the USAGM and rolled into other federal agencies with reciprocal clearance authorizations. Many others disappeared into U.S. society. As of January 2021, the USAGM had not yet determined the whereabouts of these individuals.[34]

The USAGM must never again be entrusted with delegated authority over its personnel security programs and suitability determinations until such time as it can prove that these failures will not happen again. These responsibilities must remain with the Department of Defense and the Office of Personnel Management, to which they were transferred in the final weeks of the Trump Administration.

Journalists' Security. Agency journalists, both on and off American soil, have faced danger,[35] yet their superiors have done little to protect them. Whistleblowers and Trump Administration officials found that protection of USAGM American and foreign journalists employed by USAGM networks and grantee organizations was severely lacking.

Against often-significant resistance, political appointees forced action to enable broadcasters (who were under verified threats) to broadcast from remote locations while being protected by federal law enforcement officers. Likewise, political appointees met resistance from senior career officials when insisting that foreign-based journalists in high-risk countries make their locations known to the agency in the event they required rescue, extraction, or safe housing. Such safety measures, argued career officials, would somehow represent a violation of

journalistic independence. With only rare exceptions, resistance to the most basic journalist safety measures was the knee-jerk response from USAGM career officials.

Wasting Taxpayer Dollars. The USAGM'S current operations, properly managed, can be conducted on less than $700 million per year. Prior to the arrival of President Donald Trump's appointees in June 2020, budgeting, financial responsibility, and spending totaled over $800 million per year, with virtually no oversight or supervision. Waste, unnecessary spending, nepotism for pet projects, redundant programs, and unnecessary hiring abounded.

Consolidation and Reduction of Redundant Services. Currently, the USAGM funds numerous redundant services through its own offices, through Voice of America and the Office of Cuba Broadcasting, and through its grantees. For example, VOA has a Mandarin-language service but also funds redundant services through Radio Free Asia. VOA also has a Farsi-language service that duplicates one funded through Radio Free Europe/Radio Liberty. Surplus services in the same languages are often unnecessary and counterproductive. Fiscal responsibility and transparency should return to the USAGM, with consolidation being a cornerstone of the strategy.

As noted previously, the Open Technology Fund duplicates activities that already existed at the USAGM in the Office of Internet Freedom. Numerous career whistleblowers came forward to sound the alarm to President Trump's USAGM political team about OTF's abuse and overreach.[36] Its opaque, expensive, and unnecessary usurpation of an existing USAGM office is an egregious example of government waste and illustrates the general disdain for U.S. taxpayers that is rife within this agency. Full reinstatement of OIF would allow full agency and congressional oversight into how so-called "Internet freedom" money is being spent.[37]

J-1 Visa Program Abuses. Rather than use the appropriate I visa[38] intended for foreign journalists, the USAGM uses the J-1 "cultural exchange" visas to allow foreign nationals to transition easily into jobs that American citizens with cultural and linguistic expertise could satisfy. The J-1 visa is intended for cultural and academic exchange programs, among others—*none* of which include journalism.[39] Additionally, J-1 visas are meant for non-immigrant temporary exchanges. The USAGM's J-1 visa holders often go on to apply for permanent residency, which violates the intention of this visa.

Shortwave Transmission Upgrades and Improvements. Non-web-based technologies that are proven and durable, such as shortwave radio transmission stations, have been grossly deemphasized in budgeting in favor of newer web-based technologies. This move is dangerously short-sighted and puts the U.S. at a perilous strategic disadvantage in the event of a major conflict, particularly with Russia or China.

There is great concern about the vulnerability of undersea cable trunks that make up the Internet cloud. The vast majority of global Internet traffic—95 percent—is transmitted through these cables, including news transmissions and

web-based content produced by the USAGM's broadcast networks. While the robust and popular use of the Internet is ideal during peacetime, during times of major conflict, widespread damage to the undersea cables that carry communications across the globe can reasonably be expected. Long-lasting power outages are also likely, such as those Ukraine experienced in the aftermath of Russia's 2022 invasion.

The USAGM's responsibility for the only U.S. global shortwave radio capability is of critical strategic importance if America is to carry its message to people seeking information and freedom within conflict zones. Shortwave technologies also make it possible to carry broadcasts in areas where Internet traffic is severely restricted, as it is in many authoritarian states today.

ORGANIZATIONAL ISSUES

Personnel. Personnel is one of the biggest concerns for the USAGM and its grantees. Attracting talented staff who will stay and letting go of poorly performing personnel are hurdles. Additionally, whistleblowers have come forward with numerous credible allegations of illegal nepotism and improper hiring practices.[40] Past agency leaders have ignored national security procedures when hiring and have failed to adequately vet staff.[41] Government hiring policies and federal law must be followed, and serious policy changes must be implemented to end these practices.

Relevant Government Entities

- **The White House.** As an executive branch agency, the USAGM ostensibly should report to the President and coordinate activities with the National Security Council (NSC)—especially given the direct and implied national security aspects of the agency's messaging globally. However, there currently is no specific office in the White House or NSC liaison for the USAGM.

  The original network, VOA, functioned under the Office of Coordinator of Information as early as 1941, the War Department's Office of War Information from 1942 to 1945, the State Department from 1945 to 1953, and the U.S. Information Agency from 1953 until the creation of the independent Broadcasting Board of Governors in 1999. Although some oversight and management functions of the agency are provided by the State Department, the USAGM otherwise has little connectivity to larger departments or agencies and even less to the White House. With the dissolution of the U.S. Information Agency in 1999, the USAGM has virtually been under its own supervision and guidance. The results have been dismal.

- **The State Department.** VOA was most effective before and during the Cold War when it was under the direct supervision and control of the War and State Departments, respectively. If VOA is not put in the direct chain of command under the NSC, serious consideration should be given to putting VOA under the direct supervision of the Office of Global Public Affairs at the Department of State. The Office of Global Public Affairs was formed during the Trump Administration by consolidation of the State Department's Bureau of International Information Programs and Bureau of Global Public Affairs.

  Ensuring that taxpayer-funded TV, radio, and messaging tells America's story is imperative and should be coordinated with the existing foreign-language social media platforms at the State Department. Currently, VOA's foreign-language TV programming is unreliable in telling America's story, given its amorphous interpretation of its independence firewall and its waning adherence to certain provisions of the Smith–Mundt Act depending on which political party is in office.

  The VOA firewall is meant to protect broadcasters from government interference with content; however, USAGM staff have abused the firewall and used it as an offensive measure to block oversight. Additionally, the Smith–Mundt Act stipulates that USAGM services are meant to tell the American story abroad—never to domestic audiences—but the agency has used its taxpayer funding to promote partisan messaging in the U.S. One of the most egregious examples was when, in 2020, it bought ads on its foreign-language social media sites to disseminate a Biden campaign ad and targeted it to a major Muslim population in Michigan.[42] Moreover, VOA often airs foreign adversaries' propaganda, which is antithetical to its congressionally mandated core mission. State Department oversight or "command" may be one way to ensure that VOA and the rest of the USAGM returns and adheres to its original mission.

  Clear lines of command and communications between the USAGM and an appropriate office of the National Security Council are also sorely lacking, as has been any reasonable accountability for USAGM senior leadership and strategy. The State Department's Assistant Secretary for Global Public Affairs and Undersecretary for Diplomacy and Public Affairs should also be in the accountability loop for agency actions. While the U.S. Secretary of State technically has a seat on the board of the agency, it is a toothless seat that is often deferred to the undersecretary and/or assistant secretaries noted above. This position should be relevant and directive when U.S. foreign policy and strategic communications are at stake.

For example, the years-long delay in confirming the Trump-appointed CEO left disastrous holdover leadership from the previous Administration. Employing effective leadership, even in an acting capacity, while a new CEO is awaiting Senate confirmation is necessary to prevent a repeat of this behavior.

- **Congress.** The USAGM receives its budget and mandates directly from Congress. Often, changes in major functions at the agency happen because of the lobbying efforts of a few connected individuals—often grantees lobbying for more funds and less accountability. Those changes can and do handcuff leadership from any meaningful oversight. An overhaul of the agency with review from Congress to modernize, streamline, and reduce waste must be done with congressional support.

- **Key nongovernmental stakeholders, allies, and non-allies.** These include industry groups, nonprofits, trade associations, foundations, and activist organizations, for example, America First Legal Foundation,[43] USAGM Watch,[44] BBG-USAGM Watch,[45] and Whistleblower Protection Project.[46]

CONCLUSION

The USAGM is a story of a lost opportunity both to help restore the world's confidence in the promise and ideals of America and to set a high mark for journalistic integrity and unbiased reporting. These two areas have suffered severely under two decades of USAGM mismanagement and lack of oversight. Finding solutions to these problems and the restoration of the agency's networks must be the priorities of future agency leadership.

To accomplish this, the USAGM must be fully reformed top to bottom with congressional and White House support. The possibility of consolidating not only the agency's subparts, but bringing the entire agency under the supervision of the NSC, the State Department, or both would dramatically aid that reform.

If the *de facto* aim of the agency simply remains to compete in foreign markets using anti-U.S. talking points that parrot America's adversaries' propaganda, then this represents an unacceptable burden to the U.S. taxpayer and a negative return on investment. In that case, the USAGM should be defunded and disestablished. If, however, the agency can be reformed to become an effective tool, it would be one of the greatest tools in America's arsenal to tell America's story and promote freedom and democracy around the world.

AUTHOR'S NOTE: The preparation of this chapter was a collective effort involving many individuals to whom thanks is owed. These individuals include, but are not limited to, Victoria Coates, Michael Pack, Frank Wuco, and several brave whistleblowers who prefer not to be named. Their efforts were integral to the chapter and are greatly appreciated.

CORPORATION FOR PUBLIC BROADCASTING

Mike Gonzalez

Every Republican President since Richard Nixon has tried to strip the Corporation for Public Broadcasting (CPB) of taxpayer funding. That is significant not just because it means that for half a century, Republican Presidents have failed to accomplish what they set out to do, but also because Nixon was the first President in office when National Public Radio (NPR) and the Public Broadcasting Service (PBS), which the CPB funds, went on air.

In other words, *all* Republican Presidents have recognized that public funding of domestic broadcasts is a mistake. As a 35-year-old lawyer in the Nixon White House, one Antonin Scalia warned that conservatives were being "confronted with a long-range problem of significant social consequences—that is, the development of a government-funded broadcast system similar to the BBC."[47]

All of which means that the next conservative President must finally get this done and do it despite opposition from congressional members of his own party if necessary. To stop public funding is good policy and good politics. The reason is simple: President Lyndon Johnson may have pledged in 1967 that public broadcasting would become "a vital public resource to enrich our homes, educate our families and to provide assistance to our classrooms,"[48] but public broadcasting immediately became a liberal forum for public affairs and journalism.

Not only is the federal government trillions of dollars in debt and unable to afford the more than half a billion dollars squandered on leftist opinion each year, but the government should not be compelling the conservative half of the country to pay for the suppression of its own views. As Thomas Jefferson put it, "To compel a man to furnish contributions of money for the propagations of opinions which he disbelieves and abhors, is sinful and tyrannical."[49]

A DEMONSTRATED PATTERN OF BIAS

Conservatives will thus reward a President who eliminates this tyrannical situation. PBS and NPR do not even bother to run programming that would attract conservatives. As Pew Research demonstrated in 2014, 25 percent of PBS's audience is "mostly liberal," and 35 percent is "consistently liberal." That is 60 percent liberal compared to 15 percent conservative (11 percent "mostly conservative" and 4 percent "consistently conservative").[50]

NPR's audience is even to the Left of that, with 67 percent liberal (41 percent "consistently liberal" and 26 percent "mostly liberal"), compared with 12 percent conservative (3 percent and 9 percent "consistently conservative" and "mostly conservative," respectively).[51] That may be an acceptable business model for MSNBC or CNN, but not for a taxpayer-subsidized broadcaster.

DEFUNDING THROUGH THE BUDGETARY PROCESS

Cutting off the CPB is logistically easy. The solution lies in the budgetary process. In 2022, the CPB submitted to the Labor, Health and Human Services, Education, and Related Agencies Subcommittees of the House and Senate Appropriations Committees its budget justification for fiscal year (FY) 2023. In it, the CPB requested that Congress give it a $565 million advance appropriation—a $40 million increase compared to its FY 2022 funding.[52] Unlike most other agencies, the CPB receives advance appropriations that provide them with funding two years ahead of time, which insulates the agency from Congress's power of the purse and oversight. This special budgetary treatment is unjustified and should be ended.

The 47th President can just tell the Congress—through the budget he proposes and through personal contact—that he will not sign an appropriations spending bill that contains a penny for the CPB. The President may have to use the bully pulpit, as NPR and PBS have teams of lobbyists who have convinced enough Members of Congress to save their bacon every time their taxpayer subsidies have been at risk since the Nixon era.

Defunding CPB would by no means cause NPR or PBS—or other public broadcasters that benefit from CPB funding, including the even-further-to-the Left Pacifica Radio and American Public Media—to file for bankruptcy. The membership model that the CPB uses, along with the funding from corporations and foundations that it also receives, would allow these broadcasters to continue to thrive. As George Will wrote, "If 'Sesame Street' programming were put up for auction, the danger would be of getting trampled by the stampede of potential bidders."[53] Indeed, "Sesame Street" is on HBO now, which shows its potential as a money earner.

PUBLIC INTEREST VS. PRIVILEGE

Stripping public funding would, of course, mean that NPR, PBS, Pacifica Radio, and the other leftist broadcasters would be shorn of the presumption that they act in the public interest and receive the privileges that often accompany so acting. They should no longer, for example, be qualified as noncommercial education stations (NCE stations), which they clearly no longer are. NPR, Pacifica, and the other radio ventures have zero claim on an educational function (the original purpose for which they were created by President Johnson), and the percentage of on-air programming that PBS devotes to educational endeavors such as "Sesame Street" (programs that are themselves biased to the Left) is small.

Being an NCE comes with benefits. The Federal Communications Commission, for example, reserves the 20 stations at the lower end of the radio frequency (between 88 and 108 MHz on the FM band) for NCEs. The FCC says that "only noncommercial educational radio stations are licensed in the 88–92 MHz 'reserved' band," while both commercial and noncommercial educational stations may

operate in the "non-reserved" band.[54] This confers advantages, as lower-frequency stations can be heard farther away and are easier to find as they lie on the left end of the radio dial (figuratively as well as ideologically).

The FCC also exempts NCE stations from licensing fees. It says that "Noncommercial educational (NCE) FM station licensees and full service NCE television broadcast station licensees are exempt from paying regulatory fees, provided that these stations operate solely on an NCE basis."[55]

NPR and PBS stations are in reality no longer noncommercial, as they run ads in everything but name for their sponsors. They are also noneducational. The next President should instruct the FCC to exclude the stations affiliated with PBS and NPR from the NCE denomination and the privileges that come with it.

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9

AGENCY FOR INTERNATIONAL DEVELOPMENT

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MISSION

The U.S. Agency for International Development leads the U.S. government's international development and disaster assistance programs. USAID helps communities to lead their own development journeys by reducing the impact of conflict; preventing hunger and the spread of pandemic disease; and counteracting the drivers of violence, instability, transnational crime, and other threats. In alignment with U.S. national security interests, the agency promotes American prosperity through initiatives that expand markets for U.S. exports; encourage innovation; create a level playing field for U.S. businesses; and support more stable, resilient, and democratic societies that are less likely to act against American interests and more likely to respect family, life, and religious liberty.

OVERVIEW

USAID was established during the presidency of John F. Kennedy pursuant to the Foreign Assistance Act of 1961[1] to promote the foreign policy, security, and national interests of the United States. At the height of the Cold War with the Soviet Union, it sought to halt the spread of Communism by assisting peoples in the developing world in their efforts to advance economically, socially, and politically. The agency helped to transition Central and Eastern Europe from socialism to free market–based democracies. Today, USAID leads the U.S. government's global development and humanitarian disaster assistance responses.

Over the years, USAID expanded the number of countries assisted, the scope and size of its activities, and especially its budget. The Trump Administration faced

an institution marred by bureaucratic inertia: programmatic incoherence; wasteful spending; and dependence on huge awards to a self-serving and politicized aid industrial complex of United Nations agencies, international nongovernmental organizations (NGOs), and for-profit contractors. Once started, programs continue almost indefinitely—in many countries, for decades. USAID's multibillion-dollar humanitarian programs that were once 80 percent in response to natural disasters are now 80 percent in response to violent, man-made crises and have become a permanent and immiserating feature of the global landscape.

Under the Trump Administration, USAID focused on ending the need for foreign aid by placing countries onto a Journey to Self-Reliance.[2] The Administration restructured the agency to reflect this strategic approach to development, streamlined procurement procedures to diversify its partner base, increased awards to cost-effective local (including faith-based) organizations, and improved internal governance. It instituted pro-life and family-friendly policies. It promoted international religious freedom as a pillar of the agency's work and built up an unprecedented genocide-response infrastructure.

The Biden Administration has deformed the agency by treating it as a global platform to pursue overseas a divisive political and cultural agenda that promotes abortion, climate extremism, gender radicalism, and interventions against perceived systemic racism. It has dispensed with decades of bipartisan consensus on foreign aid and pursued policies that contravene basic American values and have antagonized our partners in Asia, Africa, and Latin America. It has decoupled U.S. assistance from free-market reforms that are the keystone of economic and political stability and has teamed with global institutions to impose central planning diktats on an unprecedented scale. Wasteful budget increases requested by the Administration and appropriated by Congress have outstripped USAID's capacity to spend funds responsibly, and U.S. foreign aid has been transformed into a massive and open-ended global entitlement program captured by—and enriching—the progressive Left.

The next conservative Administration should scale back USAID's global footprint by, at a minimum, returning to the agency's 2019 pre–COVID-19 pandemic budget level. It should deradicalize USAID's programs and structures and build on the conservative reforms instituted by the Trump Administration. This will require working closely with the U.S. Congress to make deep cuts in the international affairs "150 Account" while granting USAID greater flexibility in spending its appropriated funds to achieve better developmental outcomes.

KEY ISSUES

Aligning U.S. Foreign Aid to U.S. Foreign Policy. U.S. foreign aid is too often disconnected from the strategy and practice of U.S. foreign policy. Its coordination is made difficult as the aid budget is divided among approximately 20 offices, agencies, and departments that provide some form of foreign assistance.

The USAID Administrator should be authorized to take on the additional role of Director of Foreign Assistance (DFA) with the rank of Deputy Secretary at the Department of State in charge of all U.S. foreign assistance. The DFA role would empower this person to align and coordinate the countless foreign assistance programs across the U.S. government and carry out the agenda of the next conservative President more effectively. A version of this role existed during the last two years of the George W. Bush Administration, but the Obama Administration eliminated it in 2009.

Countering China's Development Challenge. Through its trillion-dollar Belt and Road Initiative (BRI), the Peoples Republic of China (PRC) has directed billions of dollars in loans and investments to advance its geostrategic objective of displacing the United States as the premier global power. The PRC leverages its transactions—termed "debt traps" by many critics—to strengthen its global influence, extract natural resources, isolate Taiwan, win political support at international fora, and access ports and bases for its military. In Latin America, 25 of 29 countries participate in the BRI, and the PRC ranks as the region's largest trading partner. Since 2005, Chinese state-owned banks have issued $138 billion in loans to Latin American countries, and other Chinese entities have invested an additional $140 billion. In Africa, China has issued $160 billion in loans and dominates the continent's rare earth mining sector, which is critical to global energy development.

The World Bank estimates that 60 percent of all BRI loans are in financial distress, leading many countries to seek emergency financial help from Western donors. Chinese-funded projects are known for employing substandard labor and environmental practices, fueling corruption, promoting wasteful financial decisions by governments, advancing China's geostrategic interests, and creating an unequal trade relationship in which China secures raw materials from developing countries and sells those countries manufacturing products. For example, Brazil, a world leader in shoe production, saw its industry collapse under a flood of cheap Chinese imports. China's mercantilist penetration of the developing world and the negative consequences for developing countries' healthy economic growth have undercut U.S. strategic relationships in those countries and wasted billions in U.S. foreign aid.

During the Trump Administration, USAID:

- Inaugurated a robust counter-China response called Clear Choice[3] that contrasted America's development approach based on liberty, sovereignty, and free markets with China's mercantilist authoritarianism that pursued predatory financing schemes and economic and political subordination to Beijing.

- Launched its first *Digital Strategy*[4] to promote safe 5G access in emerging markets and combat Beijing's efforts to equip regimes with tools to stifle democracy.

- Struck bilateral development relationships with Japan, Israel, Kuwait, Qatar, the United Arab Emirates, and Taiwan to support projects in sub-Saharan Africa, Asia, Latin America, and the Middle East.

- Established an office in Greenland to help counter China's claims of being "a near Arctic state" and reoriented its programming across Asia—including establishing a USAID Mission to Central Asia—in line with America's Indo-Pacific strategy.[5]

- Joined with the U.S. Department of Homeland Security and National Oceanic and Atmospheric Administration to help coastal countries detect and halt illegal, unreported, and unregulated fishing and confront criminal activities practiced by state-run Chinese fishing fleets that violate international norms, ravage fishing industries in developing countries, worsen food insecurity, rob vulnerable communities of their livelihoods, and deplete maritime resources.

USAID built an organizational infrastructure to carry out its multiple lines of counter-China operations. An agencywide Clear Choice Executive Council and USAID–U.S. International Development Finance Corporation Working Group reviewed all proposed assistance programs and proposals through a counter-China lens. A senior executive–level Clear Choice Coordinator, reporting to the Administrator, advised the agency's leadership on initiatives to counter China, supported by a fully dedicated six-person Secretariat.

The Biden Administration discontinued these programs and allowed USAID's counter-China architecture to waste away, subordinating our national security interests to progressive climate politics in which Communist China is viewed as a global partner.

The next conservative Administration should restore and build on the Trump Administration's counter-China infrastructure at USAID, end the climate policy fanaticism that advantages Beijing, and assess bilateral aid through the lens of U.S. national security interests, rewarding those countries that resist China's debt diplomacy. It should finance programs designed to counter specific Chinese efforts in strategically important countries and eliminate funding to any partner that engages with Chinese entities directly or indirectly. USAID's Bangkok-based Regional Development Mission for Asia should focus its strategic attention on supporting cross-border initiatives designed to counter Chinese influence.

Climate Change. Upon taking office, President Biden issued executive orders to "put the climate crisis at the center of U.S. foreign policy and national security" and mitigate "the devastating inequalities that intersect with gender, race, ethnicity, and economic security."[6] USAID subsequently declared itself "a climate agency" and redirected its private-sector engagement strategy—teaming with America's corporate sector to wean countries off foreign aid through private investment and trade—to support the Administration's global policy to "transition from fossil fuels to renewable energy."

The Administration has incorporated its radical climate policy into every USAID initiative. It has joined or funded international partnerships dedicated to advancing the aims of the Paris Climate Agreement and has supported the idea of giving trillions of dollars more in aid transfers for "climate reparations."

The Biden Administration's extreme climate policies have worsened global food insecurity and hunger. Its anti–fossil fuel agenda has led to a sharp spike in global energy prices. Inflation has hit the poor the hardest as they expend a higher proportion of income on food purchases. Farmers in poor countries can no longer afford to buy expensive natural gas–based fertilizers that are key to achieving high yields of food production. Under advice from climate radicals, the government of Sri Lanka even banned chemical fertilizers entirely without having any replacements in place. The result has been hunger and violent political instability.

The aid industry claims that climate change causes poverty, which is false. Enduring conflict, government corruption, and bad economic policies are the main drivers of global poverty. USAID's response to man-made food insecurity is to provide more billions of dollars in aid—a recipe that will keep scores of poor countries underdeveloped and dependent on foreign aid for years to come.

The impact on Africa is especially acute. South Africa, for example, relies on coal-powered plants to generate 80 percent of its power needs. It would need $26 billion in foreign aid to make the full transition away from coal. Multiplying this amount by dozens of other countries on the continent, the financial resources needed to transition away from fossil fuels are unachievable. In Latin America, countries that are global leaders in oil and gas production have sharply curtailed their energy production in line with climate activists, upending the hemisphere's major source of export revenues and condemning it to years of economic and political instability.

USAID should cease its war on fossil fuels in the developing world and support the responsible management of oil and gas reserves as the quickest way to end wrenching poverty and the need for open-ended foreign aid. The next conservative Administration should rescind all climate policies from its foreign aid programs (specifically USAID's *Climate Strategy 2022–2030*[7]); shut down the agency's offices, programs, and directives designed to advance the Paris Climate Agreement; and narrowly limit funding to traditional climate mitigation efforts. USAID resources

are best deployed to strengthen the resilience of countries that are most vulnerable to climatic shifts. The agency should cease collaborating with and funding progressive foundations, corporations, international institutions, and NGOs that advocate on behalf of climate fanaticism.

Diversity, Equity, and Inclusion Agenda. USAID installed advisers on Diversity, Equity, and Inclusion (DEI) committees "in all its Bureaus, Offices, and [overseas] Missions" and created "an agency-wide dashboard and DEI scorecard for all bureaus, offices, and missions" to track staff compliance with the Administration's DEI directives. A Chief DEI Officer oversees this DEI infrastructure and sits in the Administrator's office. DEI directives are now part of all agency policies and are incorporated as standard clauses in all contract and grant awards. Those seeking to do business with the agency must "describe the approaches they will use to diversify their partner base."[8] USAID often ties DEI to "gender and climate equity," corrupting every aspect of the agency's overseas work.

The upshot has been to racialize the agency and create a hostile work environment for anyone who disagrees with the Biden Administration's identity politics. This pursuit of ideological purity threatens merit-based professional advancement for staff who do not overtly conform, hyperpoliticizes what should be a nonpartisan federal workplace environment, creates an institutionalized cadre of progressive political commissars, corrupts the award process, and discourages potential contractors and grantees that disagree with this radical agenda from applying for USAID funding.

The next conservative Administration should dismantle USAID's DEI apparatus by eliminating the Chief Diversity Officer position along with the DEI advisers and committees; cancel the DEI scorecard and dashboard; remove DEI requirements from contract and grant tenders and awards; issue a directive to cease promotion of the DEI agenda, including the bullying LGBTQ+ agenda; and provide staff a confidential medium through which to adjudicate cases of political retaliation that agency or implementing staff suffered during the Biden Administration. It should eliminate funding for partners that promote discriminatory DEI practices and consider debarment in egregious cases.

As federal departments and agencies cannot play partisan politics, staff—irrespective of hiring mechanism—as well as implementers and grantees that engage in ideological agitation on behalf of the DEI agenda should be dismissed, and entities should be debarred. The next conservative Administration should return the authority over all civil rights issues at USAID to the agency's Office of Civil Rights, which is the appropriate locus for ensuring that all Americans have guaranteed equality of career opportunity at USAID.

Refocusing Gender Equality on Women, Children, and Families. Instead of protecting women's and children's unalienable human rights and propelling their ability to thrive in society, past Democrat Administrations have nearly erased

what females are and what femininity is through "gender" policies and practices. For instance, these Administrations have diluted USAID's focus on assisting vulnerable women, children, and families around the globe by adding protections for and ideological advocacy on behalf of progressive special-interest groups. USAID now aggressively promotes abortion on demand under the guise of "sexual and reproductive health and reproductive rights," "gender equality," and "women's empowerment" and advocates for those who claim minority status or vulnerability.

Families are the basic unit of and foundation for a thriving society. Without women, there are no children, and society cannot continue. As evidenced by the confirmation testimony of now-Associate Justice Ketanji Brown Jackson, the progressive Left has so misused and altered the definition of what a "woman" is that one of our U.S. Supreme Court Justices was unable to delineate clearly the fundamental biological and sexual traits that define the group of which she is a part. USAID cannot advocate for and protect women when they have been erased globally along with the values and traditional structures that have supported them.

The next conservative Administration should rename the USAID Office of Gender Equality and Women's Empowerment (GEWE) as the USAID Office of Women, Children, and Families; refocus and realign resources that currently support programs in GEWE to the Office of Women, Children, and Families; redesignate the Senior Gender Coordinator as an unapologetically pro-life politically appointed Senior Coordinator of the Office of Women, Children, and Families; and eliminate the "more than 180 gender advisors and points of contact…embedded in Missions and Operating Units throughout the Agency."[9]

In addition, the next conservative Administration should rescind President Biden's 2022 Gender Policy and refocus it on Women, Children, and Families and revise the agency's regulation on "Integrating Gender Equality and Female Empowerment in USAID's Program Cycle."[10] It should remove all references, examples, definitions, photos, and language on USAID websites, in agency publications and policies, and in all agency contracts and grants that include the following terms: "gender," "gender equality," "gender equity," "gender diverse individuals," "gender aware," "gender sensitive," etc. It should also remove references to "abortion," "reproductive health," and "sexual and reproductive rights" and controversial sexual education materials.

In the past, the word "gender" was a polite alternative to the word "sex" or term "biological sex." The Left has commandeered the term "gender," which used to mean either "male" or "female," to include a spectrum of others who are seeking to alter biological and societal sexual norms. The promotion of gender radicalism is anathema to the traditional norms of many societies where USAID works, causes resentment by tying lifesaving assistance to rejecting the aid recipient's own firmly held fundamental values regarding sexuality, and produces unnecessary consternation and confusion among and even outright bias against men.

The next Administration should ensure that USAID's goal in service of its mission is to help protect and propel all members of society—women, children, and men—from conception to natural death. To do so, USAID's Office of Women, Children, and Families should strive to ensure that communities have their basic human needs, without which they will be unable to thrive, met first and foremost. Basic human needs include equal and safe access to potable water, sanitation, food, education, health care, houses of worship, justice, pregnancy and family resource centers, working capital, electricity, technology, and business opportunities. The Office of Women, Children, and Families should implement the Geneva Consensus Declaration on Women's Health and Protection of the Family and prioritize partnerships with local organizations, including faith-based organizations (FBOs).

Protecting Life in Foreign Assistance. Protecting life should be among the core objectives of United States foreign assistance. Shortly after taking office, however, President Biden issued a memorandum that reversed a myriad of pro-life policies and revoked the Protecting Life in Global Health Assistance (PLGHA) policy, widely known as the Mexico City Policy. Biden also restored funding to the United Nations Population Fund (UNFPA), which supports and implements China's coercive abortion and sterilization regimen.

PLGHA requires foreign NGOs, as a condition of receiving assistance, to agree not to perform or actively promote abortions as a method of family planning in foreign countries. Previous pro-life Presidents beginning with Ronald Reagan applied these conditions to family planning assistance, but President Trump for the first time expanded the Mexico City Policy to protect "global health assistance furnished by all departments or agencies" (estimated to be $8.8 billion annually).

The Biden Administration restored abortion subsidies to pro-abortion NGOs including Planned Parenthood International and MSI Reproductive Choices. In reversing PLGHA, Biden declared a radical assault on the policy of protecting life, choosing instead to promote abortion on demand around the world under the guise of "sexual and reproductive health and rights." USAID's priority of funding the global abortion industry negates programs that promote life, women's health, and the family.

Even under PLGHA, several loopholes allowed support for the global abortion industry to continue. International NGOs that perform and promote abortions overseas like Population Services International, Pathfinder, PATH, the Population Council, EngenderHealth, and WomanCare Global International continued to receive funding from USAID under PLGHA and now, under Biden, receive tens of millions more in U.S. taxpayer dollars in foreign assistance annually without any oversight. When the United Nations Secretariat promoted abortion and abortion-inducing drugs under the umbrella of "sexual and reproductive health" as an element of its COVID-19 Global Humanitarian Response Plan in May 2020, the exemptions in PLGHA for humanitarian aid and multilateral organizations

illuminated another loophole in the policy's effectiveness in safeguarding U.S. taxpayer dollars from being used to promote abortion.

Pro-abortion groups also have received funds under other categories of foreign aid that fall outside the scope of global health assistance, including women-related and economic assistance programs. Members of Congress have advocated closing these loopholes by extending PLGHA to all foreign assistance through the Protecting Life in Foreign Assistance Act, sponsored by Senator Mike Lee (R–UT) and Representative Virginia Foxx (R–NC).[11] Current law in the Foreign Assistance Act gives the President broad authority to set "such terms and conditions as he may determine" on foreign assistance, which legally empowers the next conservative President to expand this pro-life policy.

To stop U.S. foreign aid from supporting the global abortion industry, the next conservative Administration should issue an executive order that, at a minimum, reinstates PLGHA and summarily blocks funding to UNFPA but also closes loopholes by applying the policy to all foreign assistance, including humanitarian aid, and improving its enforcement. The executive order to reinstate PLGHA should be drafted broadly to apply to all foreign assistance. It should simultaneously rescind President Biden's memorandum entitled "Protecting Women's Health at Home and Abroad," issued on January 28, 2021.[12] The new pro-life executive order should apply to foreign NGOs, including subgrantees and subcontractors, and remove exemptions for U.S.-based NGOs, public international organizations, and bilateral government-to-government agreements. All entities funded by USAID, both directly and indirectly, should report their compliance with the PLGHA, and USAID should institute penalties, including debarment from future federal funding, for violations of it. The new executive order also should instruct the Administrator of USAID to publish reports on implementation of the PLGHA by both prime and sub-prime recipients.

In addition, the Helms Amendment should continue to be applied, as it has been by both Republican and Democratic Administrations for more than 50 years, as a complete ban on the use of taxpayer dollars to pay for abortions abroad.

International Religious Freedom. Conservatives believe international religious freedom is central to USAID's development efforts. President Trump's Executive Order 13926 on "Advancing International Religious Freedom"[13] instructed the Secretary of State, in consultation with the USAID Administrator, to budget at least $50 million a year for programs that advance international religious freedom and "ensure that faith-based and religious entities, including eligible entities in foreign countries, are not discriminated against on the basis of religious identity or religious belief when competing for Federal funding."

Under the Trump Administration, the agency set up a senior-level Chief Adviser for International Religious Freedom who reported directly to the Administrator with the task of coordinating a "whole-of-USAID" approach to achieving this

priority. It created a robust genocide-response capability. USAID affirmed the agency's partnerships with faith-based organizations through its rule on "Participation by Religious Organizations in USAID Programs;"[14] "Partnership Guidance and Answers to Frequently Asked Questions (FAQs) for Faith Based Organizations;" and "Legal Guidance and Answers to FAQs for USAID Staff."

Today, USAID officials and their progressive partners have resisted efforts to promote religious freedom, especially as it relates to abortion and gender ideology, which are anathema to the traditional societies where USAID funds programs (in addition to many U.S. taxpayers). U.S. Secretary of State Antony Blinken repudiated his predecessor's focus on religious freedom.

The next conservative Administration must champion the core American value of religious freedom, which correlates significantly with poverty reduction, economic growth, and peace. It should train all USAID staff on the connection between religious freedom and development; integrate it into all of the agency's programs, including the five-year Country Development and Coordination Strategies due for updates in 2025; strengthen the missions' relationships with local faith-based leaders; and build on local programs that are serving the poor. Congress should appropriate funding to USAID specifically to support persecuted religious minorities in line with Executive Order 13926.

Streamlining Procurement and Localizing the Partner Base. USAID is a grantmaking and contracting agency that disburses billions of dollars of federal funding in developing countries through implementing partners, such as U.N. agencies, international NGOs, for-profit companies, and local nongovernmental entities. In rare instances, such as in Jordan and Ukraine, the agency provides direct budget support to finance the operations of host-country governments. USAID far more often counts on expensive and ineffective large contracts and grants to carry out its programs. It justifies these practices based on speed and a lower administrative burden on its institutional capacity.

Partnering and procurement reform was a pillar of the Trump Administration's effort to secure better development results, cut costs, and advance the Journey to Self-Reliance strategy of exiting countries from aid. In December 2018, USAID launched its first Acquisition and Assistance Strategy to streamline procurement processes; introduce innovation into its programming; and diversify its partner base away from large, expensive, and partisan implementers. The strategy counted on local NGOs, including faith-based entities already on the ground, to provide the agency with less costly and more effective alternatives to the aid giants. The strategy also prioritized global partnerships with the private sector—corporations, investors, diasporas, and private philanthropies—the source of real capital investment, innovation, and efficiencies that can maximize the impact of taxpayer dollars. Under the Biden Administration, despite rhetoric to the contrary, the aid industrial complex has recaptured the agency and stifled further reforms.

The next conservative Administration should immediately implement language on key policy topics as standard provisions in all grants, cooperative agreements, and contracts. These provisions should include language on implementing the Policy on Protecting Life in Foreign Assistance, imposing conditions on funding to multilateral organizations, and increasing accountability and transparency.

To ensure that USAID exercises its existing authorities to streamline procurement processes, the next conservative Administration should name a political appointee as the agency's Senior Procurement Executive and Director of the agency's Office of Assistance and Acquisitions (OAA) in the Bureau of Management (M). The head of M/OAA is one of the most important positions at USAID, as the office is ground zero for controlling the disbursement of U.S. foreign aid. The White House should empower the Administrator and his or her designees to make determinations concerning the scale and scope of awards and increase the transparency and accountability of subawards, which can escape public scrutiny and promote progressive policies during conservative Administrations. USAID should use existing authority to use program funds to expand its roster of contracting and agreement officers to accelerate the delivery of funds for disaster responses to a more diverse collection of implementers.

Accomplishing the next conservative Administration's policy goals at USAID will require that political appointees have knowledge of, responsibility for, and visibility into the design and awarding of grants, contracts, and cooperative agreements. The Administration should restore the Senior Official Accountability Review (SOAR) or create a similar process to ensure that proposed programs above a certain dollar threshold in Total Estimated Cost/Total Estimated Amount receive a close review by policymakers in each bureau and office and, for large awards, in the agency's front office.

"Localization" is a buzzword within the aid community but correctly assumes that more funding through local organizations produces better aid outcomes. Shifting from giant U.S.-based implementers has proved difficult to achieve, however, given intense internal bureaucratic resistance; opposition from the aid industrial complex; and foot-dragging from progressives, who view local NGOs—especially faith-based NGOs prominent in Africa and Latin America—as obstacles to promoting abortion, gender radicalism, climate extremism, and other woke ideas.

The President's Emergency Plan for AIDS Relief (PEPFAR) has shown that localization at scale is possible within a short time span. Over the four years of the Trump Administration, the multibillion-dollar program increased the amount of funding disbursed to local entities from about 25 percent to nearly 70 percent with positive overall results. This model should be replicated across all of USAID.

In addition, the next conservative Administration should expand use of the New Partnership Initiative (NPI) to every bureau and office; reset the requirements for USAID's overseas missions to craft and execute NPI action plans; and assign each

mission a minimum percentage of its portfolio that must go to new, underutilized, and local partners. Crucial to the strategy will be increasing the use of open competition that lowers barriers to entry and fixed-amount awards that carry less of a compliance burden along with eliminating cost-plus reimbursement contracts that favor large companies. Before advancing a new program, the agency should be required to assess existing local activities to avoid undercutting or duplicating them. At every opportunity, USAID should build on existing local initiatives.

Global Health. The United States is the world's largest funder of global health initiatives. For more than 60 years, the American people have offered health assistance to the world and saved millions of lives. The USAID Bureau for Global Health (GH), the second largest within USAID, oversees a multibillion-dollar operation to support maternal and child health; voluntary family planning; PEPFAR and the President's Malaria Initiative (PMI) (both started under President George W. Bush); and other initiatives against other infectious and neglected tropical diseases. Effective use of funds is essential to maximize care for the world's neediest people.

Countries with strong health institutions and sound public health practices responded quickly to and recovered more rapidly from the COVID-19 pandemic. This demonstrates the importance of "localization," by which USAID helps governments and the private sector in developing countries to strengthen their own ability to address needed training, services, accountability, and organizational capacity.

Unfortunately, many USAID-funded global health activities remain rooted in patterns that began decades ago and measure improvements in terms of inputs—money spent—instead of outcomes achieved. From the 1950s to 1970s, the major recognized threats to human health were infectious diseases such as polio and smallpox, and USAID funded programs "in" a country, not "with" a country. Maternal and child health, food, water, and sanitation programs were often intermittent. USAID consistently financed population control, contraception, and abortion as essential to "development." Most programs focused on one disease or condition but had little integration with other global health activities. Chronic diseases were ignored.

Consequently, the next conservative Administration should focus on updating the Global Health Bureau's portfolio, emphasizing a comprehensive approach to supporting women, children, and families; building host-country institutional capacity; increasing awards to local and faith-based partners (expanding what occurred during the Trump Administration with the NPI); and improving USAID's ability to coordinate with local partners.

Updating Funding Priorities. The Bureau should identify and eliminate outdated and ineffective concepts and focus on funding innovation. A rigorous review is necessary to ensure that current programs and funding streams avoid wasting taxpayer dollars and prioritize what is needed now and what works.

Focusing on Holistic Health Care and Support for Women, Children, and Families. The continued high rate of maternal and infant mortality is a persistent global tragedy. Contrary to current publicity, this problem is not solved by abortion. Families genuinely cherish children. The next leadership at USAID must focus attention on women and children's health (including unborn children) as well as health risks across life spans, including childhood infections, cervical cancer, adolescent risks, and family stability, by utilizing a coordinated approach. The Bureau should implement a "Request for Application for Resilient Families" that harvests collaborative funds from siloed programs and makes individuals and the family, not diseases or conditions, the true focus of intervention.

Increasing USAID Collaboration with Faith-Based Organizations. FBOs historically have been much more successful in outreach to remote and vulnerable populations, based on trust built through decades of service. The value of collaborating with FBOs was demonstrated in the October 2020 Evidence Summit on Religious Engagement. In sub-Saharan Africa, FBOs often provide more than 80 percent of health care, especially to the extremely poor. In contrast, the Global Health Bureau historically has provided 85 percent of its funding to large U.S. NGOs with significant overhead costs, as a result of which only 20 percent–30 percent of funding reaches people in need.[15]

Leveraging the Strength and Experience of Presidential Initiatives. Millions of people are alive today because of the American people's investment in PEPFAR and PMI. The training, laboratory, clinical intervention, health education, data collection, and organizational platforms of these programs became the bedrock for responding to the COVID pandemic. It is time for these programs to become part of an integrated, strong, and sustainable network of health care and public health in developing countries. A smooth transition to national ownership and funding, however, will require better coordination of USAID's own stovepiped programs with PEPFAR and PMI.

Strengthening the Collection and Use of Data. Good decisions are based on accurate data. For decades, global health programs have relied mostly on statistical modeling (rather than actual data) or survey data (the weakest type of data). Poor data quality undermines both the evaluation and improvement of desired outcomes achieved by our global health programs. The Trump Administration implemented critical updates of PEPFAR's systems for the collection and reporting of data to increase transparency and hold funded partners and overseas missions accountable. The next conservative Administration should apply these reforms to all of USAID's global health programs.

Strengthening Private-Sector Engagement. The Bureau's Center for Innovation and Impact (CII) should be empowered to expand networks of private and faith-based health organizations that can develop projects using development-impact bonds, capital funds, and innovative technologies, including with the

Millennium Challenge Corporation and the new U.S. International Development Finance Corporation. More flexible and agile CII funding will spur innovation within the Bureau and help to enhance countries' self-reliance in the provision of health care.

Improving Bureau Hiring, Staffing, and Recruitment Practices. The Global Health Bureau should address its own management challenges by modifying the high ratio of contractors to direct hires, holding career leadership accountable for effective management, and building more flexibility in emergency responses. Bureau personnel suffer from "mission drift," burnout, and a lack of vision. New directives, social agendas, and extra layers of review have obscured core activities and caused talent to leave the agency. Conservative leadership must return the focus to development and improved workforce morale and focus on global outcomes and the efficient use of taxpayer dollars.

Holding the U.N., the World Health Organization (WHO), and Other Multilateral Organizations Accountable. Leadership should designate a political appointee to help coordinate cross-agency efforts to hold the U.S. government's multilateral partners (U.N. and WHO agencies and other international organizations) to a higher level of financial and programmatic accountability, including assurances that language promoting abortion will be removed from U.N. documents, policy statements, and technical literature. The United States must have more prominent representation in international technical committees and regulation-setting organizations to ensure the proper execution of American resources, the preservation of our values, the protection of innovation, and the vitality of our biomedical sector.

Global Humanitarian Assistance. The U.S. government is the world's largest humanitarian actor, annually disbursing billions of dollars in lifesaving assistance—food, water, shelter, emergency health care, and related protection support—to tens of millions of vulnerable people. Funded by the U.S. Congress through the International Disaster Assistance (IDA) account, USAID pays for nearly half of the budget of the Nobel Prize–winning U.N. World Food Programme (WFP) as well as dozens of simultaneous operations that range from responses to hurricanes in Central America to tackling outbreaks of Ebola in Central Africa and caring for millions of people displaced by ongoing conflicts.

USAID's emergency responses once were focused primarily on natural cataclysms such as hurricanes, floods, and earthquakes. Today, the agency spends more than 80 percent of its humanitarian budget on chronic man-made crises. Most of these "emergency responses" began years ago and absorb billions of dollars annually with no end in sight. Every year sees financial demands grow in response to new conflicts, most recently Ukraine. The budget of the Bureau for Humanitarian Assistance (BHA) has doubled compared to just a few years ago, and BHA can no longer manage its funds responsibly. A politically powerful foreign aid industry that

benefits financially from extending and expanding these large-scale programs for years, even decades, ensures little scrutiny of these ever-increasing appropriations.

The massive growth in "emergency" aid distorts humanitarian responses, worsens corruption in the countries we support, and exacerbates the misery of those we intend to help. The permanence of this assistance, particularly in countries where we have little to no in-country presence and must rely on U.N. agencies to self-monitor, has morphed into a co-governance scheme in which the U.S. government effectively finances the social services obligations of corrupt regimes that threaten the United States. These governments can then redirect scarce budget resources away from costly health and education toward financing their wars, supporting terrorism, repressing their citizens, and enriching themselves. Examples of this abuse are spread throughout the world.

- Over the past decade, the U.S. government has expended $14 billion in aid to Syria where the bloody regime of Bashar al-Assad—a close ally of Iran and Russia—skims nearly half of foreign aid through inflated official exchange rates, the diversion of food baskets to its military units, and procurement arrangements with compromised local contractors.

- Yemen, once the breadbasket of the Arabian Peninsula, is now dependent on billions of dollars of aid as formerly productive Yemeni farmers cannot compete against "free food" while irrigation systems remain in disrepair, leaving the country to suffer from water shortages during long summer droughts and flooding during its rainy season. Iran-backed Houthi rebels divert substantial amounts of aid to support their war efforts.

- In Afghanistan, the aid infrastructure built over 20 years of American military presence that three Presidents wanted to end collapsed with the failure of U.S.-trained Afghan forces to repel the Taliban's 2021 advances. Yet the country has received nearly $1 billion more in U.S. humanitarian aid since the Taliban's takeover and absent a U.S. embassy to ensure that it is not diverted to the Taliban and other terrorist groups.

- In Burma, U.S. aid finances all of the food and medical care for hundreds of thousands of persecuted Rohingya that the military regime forces to live in open-air concentration camps.

- In northern Iraq, hundreds of thousands of Yazidis—targeted for genocidal extermination by ISIS—remain in miserable camps unable to return home because of the Iraqi government's refusal to clear out Iran-backed militias occupying their homeland.

In effect, humanitarian aid is sustaining war economies, creating financial incentives for warring parties to continue fighting, discouraging governments from reforming, and propping up malign regimes.

Nefarious actors reap billions of dollars in profits from diversions of our humanitarian assistance, but so do international organizations. The WFP charges 36 percent in overhead while Oxfam International's overhead has reached 70 percent in Yemen, reflecting the high costs of foreign staff, security, and logistics. With powerful lobbies in Washington, D.C., and in leadership positions throughout USAID and the Department of State, the aid industry adroitly exploits Congress's disposition to increase funding year on year to assist those in dire need but provides no evidence to justify the mounting budget requests.

In 2020, USAID's leadership fused formerly bifurcated food and nonfood emergency relief operations into a single Bureau for Humanitarian Assistance to improve the management of the agency's largest portfolio, but this reform was not sufficient to address the problem. The next Administration should resize and repurpose USAID's humanitarian aid portfolio to restore its original purpose of providing emergency short-term relief, prepare vulnerable communities for transition, and do no harm in the following ways:

- Work with Congress to make deep cuts in the IDA budget by ending programs that do more harm than good in places controlled by malign actors, such as in Yemen, Syria, and Afghanistan, where our aid is consumed by fraud, diversion, and partner overhead costs.

- Require USAID and the State Department to devise country-based exit strategies that term-limit the duration of humanitarian responses and transition funding from emergency to development projects. This will require robust diplomacy to press host governments to integrate displaced persons in lieu of keeping them in expensive and dehumanizing camps financed by the international community.

- Transition from large awards to expensive, inefficient, and corrupt U.N. agencies, global NGOs, and contractors to local, especially faith-based, entities that are already operating on the ground. This approach provides a far less expensive and more effective alternative for aid delivery. Local partners more ably navigate corrupt environments and are more likely to steer vulnerable populations away from dependence on aid toward self-sufficiency.

- Require that BHA avail itself of existing IDA authorities that it fails to use, including to dispense with the cost-reimbursement model that disqualifies

undercapitalized local NGOs; accept other donor vetting of local partners; streamline the award-approval process; and expand the use of fixed-amount awards to rein in cost overruns.

- Direct USAID's Bureau for Management to hire more procurement officers for BHA to strengthen the Bureau's award management capacity and reduce the incentives to issue large awards to aid industry giants.

- Allow BHA to manage the process of hiring Personal Services Contractors.

- Require BHA's partners to adopt stricter vetting procedures to prevent aid from being diverted to terrorists.

- Increase efforts to obtain greater contributions, not just pledges, for humanitarian operations from other donors and make this a condition for receiving additional U.S. aid.

Leveraging Foreign Aid to Unleash the Power of America's Private Sector. During the 1960s, when USAID was launched, 80 percent of financial flows from the United States to the developing world was in the form of U.S. government assistance. Today, that figure is under 10 percent, overtaken by private investment, remittances, and private charities, all demonstrating the power of America's private sector to promote wealth-generating economic development in poor countries. Leaders in the developing world routinely press U.S. officials about their preference for "trade and investment, not aid."

Instead, the Biden Administration is leveraging private-sector financing to promote its climate and other progressive agendas worldwide. The next conservative Administration must return USAID to a foreign aid model that leverages its resources to promote private-sector solutions to the world's true development problems and end the need for future foreign aid. Private capital investment in these markets is the greatest enabler of job creation and sustainable economic growth throughout the developing world.

A key tool of American soft-power leadership is the U.S. Development Finance Corporation (DFC). Launched in December 2019, DFC sought to unleash the power of America's private sector to advance our interests by providing emerging markets with blended financing opportunities to help end wretched poverty, create new markets for U.S.-made products, strengthen bilateral partnerships in strategic parts of the world, and offset China's predatory loans and investments. The Trump Administration launched a USAID–DFC Working Group to maximize development outcomes and review individual investment projects through a counter-China lens and ensure a cohesive interagency development response.

As development agencies, USAID and DFC must do a better job of aligning their respective activities and closely integrate both structurally and operationally. The easiest way to foster this alignment is to "dual hat" the role of DFC's chief development officer so that he or she serves simultaneously in both institutions. Like all U.S. federal bodies, DFC should be restored to its original intent of deploying its commercial risk-reducing financial services instead of its current misuse as another global vehicle to promote economy-killing climate programs, meet irrelevant diversity objectives, and overfocus on low-impact or misguided gender-based activities.

Branding. A deeply embedded culture within the foreign aid bureaucracy views public recognition of U.S. assistance as secondary to a larger philanthropic mission and is embarrassed by the American flag. Citing vaguely defined security concerns, USAID's implementers—U.N. agencies, international NGOs, and contractors—often fail to credit the American people for the billions of dollars in assistance they provide the rest of the world even as they engage in self-promoting public relations to raise other donor funds. This approach has negative foreign policy implications as China relentlessly promotes its own self-serving efforts to gain influence and resources. Worst of all, malign actors sometimes appropriate credit for unbranded U.S. assistance: Houthi terrorists, for example, claim to provide for the people under their occupation with anonymous U.S. humanitarian aid.

The United States is in a struggle for influence with China, Russia, and other competitors, and American generosity must not go unacknowledged. The next conservative Administration should build on the Trump Administration's branding policy, which revamped ADS Chapter 320, to force the aid bureaucracy to fully credit the American people for the aid they are providing. The Senior Advisor for Brand Management in the Bureau for Legislative and Public Affairs (LPA) (discussed *infra*) should be a political appointee who is responsible for maximizing the visibility of U.S. assistance by enforcing branding policy on every grant, cooperative agreement, and contract. The LPA should liaise with counterparts at the U.S. Agency for Global Media (USAGM) to ensure local media pickup of these activities.

OTHER OFFICES AND BUREAUS

Office of Administrator. The next conservative Administration should leave in place the current structure of two presidentially appointed, Senate-confirmed Deputy Administrators, one for Policy and one for Management. The Deputy Administrators and the Chief of Staff must be individuals with extensive previous service in the executive branch, ideally at foreign-affairs agencies, and be fluent in the language and practice of federal procurement.

Bureau for Foreign Assistance. As noted above, the next conservative Administration should name the USAID Administrator as Director of Foreign Assistance (F) at the Department of State with the rank of Deputy Secretary. It

should reorient the bulk of F staff from focusing on the formulation of the annual President's budget proposal to the execution of already appropriated resources. This should include eliminating the duplicative Mission and Bureau Resource Requests; speeding up the availability of appropriations by delivering to Congress within 60 days the report required by Section 653(a) of the Foreign Assistance Act (FAA); and fast-tracking the approval of Congressional Notifications (CNs) and other pre-obligation requirements.

Management Bureau. As indicated previously, the next conservative Administration should name a political appointee as USAID's Senior Procurement Executive and Director of the agency's Office of Acquisition and Assistance (M/OAA). Political appointees with the appropriate credentials (including warrants) should be placed within M/OAA, and the agency should exercise its authority to engage qualified experts from other federal departments and agencies and outside of government (if they are free of conflicts of interest) on the Technical Committees that review applications for USAID's contract and grant competitions. The Administration should change the designation of USAID's Competition Advocate to an individual favorable to innovative types of contracts that can reduce the aid oligopoly's grip on the agency.

Office of Human Capital and Talent Management. As soon as possible after Inauguration Day, the next conservative Administration should name a political appointee as USAID's Chief Human Capital Officer (CHCO) and Director of the Office of Human Capital and Talent Management. USAID's White House Liaison must be an individual with substantial experience with federal personnel systems. The White House Office of Presidential Personnel should allow the USAID Administrator to explore with counterparts at the Office of Personnel Management whether the agency could hire personnel under both the Administratively Determined authority and Schedule C of the Excepted Service of the Federal Civil Service.

USAID should be one of the agencies to pilot-test a reinstated Executive Order 13957,[16] which created a Schedule F within the Excepted Service, and should aggressively recruit and place candidates into term-limited positions under Schedule A of the Excepted Service (especially veterans). The new CHCO should examine how the existing members of the Senior Executive Service (SES) at USAID should be reworked throughout the agency and should institute an SES Mobility Program to encourage the regular rotation of senior career leaders, including through details to other departments and agencies.

Bureau for Policy, Planning, and Learning. The next conservative Administration should shift the policy functions of the Bureau for Policy, Planning, and Learning (PPL) to the Office of Budget and Resource Management (BRM), located in the Office of the Administrator. It should rename BRM the Office of Budget, Policy, and Resource Management (BPRM) and staff the policy team with political appointees. The Administration should also move the responsibility for reviewing

and processing proposed changes in USAID's policy bible, the Automated Directives System (ADS), from the Management Bureau to the new BPRM.

Even before these changes, the Assistant Administrator for PPL should decree an immediate freeze on changes in the ADS and agencywide policy documents to allow for the priority publication of amendments to reflect the new Administration's viewpoint. All major agency policies should be reviewed and amended or withdrawn within the new Administration's first calendar year in office.

Bureau for Legislative and Public Affairs. The next conservative Administration should invest no more than 10 percent of USAID's allocation of Administratively Determined politically appointed positions in the Bureau for Legislative and Public Affairs. A priority for these positions (combined with hires under Schedule A) should be the review and editing of the agency's public-facing web pages and social media accounts to eliminate material that does not conform to the new Administration's policies. The agency should accelerate the review of Congressional Notifications within LPA and publish all CNs and congressional reports.

To ensure consistency and clarity of public messaging, LPA should gain direct authority over the communications staff scattered through USAID's various Bureaus and Offices. LPA should expand its public-facing efforts to include conservative allies that are active in global development and humanitarian aid work, including industry groups, nonprofits, trade associations, foundations, and advocacy organizations, and correspondingly reduce the aid industrial complex's grip on USAID's corporate relationships.

Office of General Counsel. Along with the Director of M/OAA, the General Counsel is one of the two or three most important positions at USAID and should be a priority for immediate appointments. Because proper legal interpretation of executive orders and internal USAID policy is crucial, the next conservative Administration should recruit and appoint a commanding team of Schedule C attorneys in the Office of the General Counsel (OGC). Within weeks of Inauguration Day, OGC should issue clear guidance on the eligibility of faith-based organizations for USAID funding.

Office of Budget Resources and Management. The Director of Budget Resources and Management should be a political appointee empowered as part of the Administrator's senior management team. BRM's highest priorities should be to prepare the report required by Section 653(a) according to the Administrator's guidance, institute a fast-track process for the submission of Congressional Notifications, and identify already appropriated resources to reprogram immediately to fund the new Administration's priorities. The next conservative Administration should consider prioritizing the placing of young political appointees in BRM over LPA.

Bureau for Democracy, Development, and Innovation. A key outcome of the transformation of USAID undertaken during the Trump Administration, the Bureau for Democracy, Development, and Innovation (DDI) is the home for most

of the agency's non-health, nonhumanitarian funding as well as almost all of its sectoral appropriations directives, including those that reflect the pet projects of individual Members of Congress. The Bureau is the policy and financial nexus at USAID for most of the Biden Administration's radical priorities in foreign assistance, including gender, climate change, and the promotion of identity-based politics. On the positive side, DDI is also the Bureau in charge of areas that will be crucial to a reorientation of USAID, including trade, economic growth, innovation, partnerships with the private sector, and the agency's relationship with communities of faith.

The next conservative Administration should make the rapid staffing of key DDI positions a high priority. Besides the Senate-confirmed Assistant Administrator, the Directors of each of the Centers and Hubs in the Bureau will need political leadership. Almost every one of the agencywide policies that cover DDI's areas of responsibility will need to be edited or rewritten entirely as soon as possible. The next conservative Administration should harvest DDI's central appropriations to fund new priorities, especially working with ethnic and religious minorities and faith-based organizations and joint ventures with the private sector in education and energy. All DDI programs should issue funding opportunities restricted to new and underutilized partners modeled on the NPI.

REGIONS

Asia. Asia is the most populous continent and ground zero in the battle against Communist China's efforts to exploit the development needs of poor countries for geopolitical gain. America's Indo-Pacific Strategy should guide USAID's approaches to disbursing foreign aid in the region.

USAID should intensify its bilateral relationships with pro–free market Japan, Australia, South Korea, and India so that they can jointly advance private-sector solutions to secure financing for power generation, infrastructure, digital connectivity, investment and trade expansion, and other economic activities. USAID enjoys a strong in-country presence in India, buttressed by recent coordination on the global response to COVID-19 as India is a global leader in vaccine production. Those ties should be expanded. So too should development cooperation with Taiwan, which boasts effective pandemic response capacity that should be shared with developing countries.

China's island-hopping efforts to capture vulnerable Pacific states is a direct strategic threat to U.S. maritime supremacy and homeland security, and USAID and its allied donors should neutralize these efforts through the deployment of targeted assistance such as helping countries combat the effects of China's illegal fishing. While China outpaces the ability of the democratic alliance to deploy state-backed financing to developing countries, it is unable to compete with our collective private-sector capacity to deploy trillions of dollars of capital.

Pakistan is a prime example of foreign aid policies disconnected from U.S. national interests. The country has been the recipient of more than $12 billion in U.S. foreign aid since 2010, yet it remains intensely anti-American and corrupt, has backed the Taliban continuously since 2001, jump-started North Korea's nuclear bomb program, brutalizes its religious minorities, and is a willing client of China while taking on unrepayable loans from the U.S. taxpayer-funded International Monetary Fund and World Bank.

Middle East. The Middle East is far more vulnerable today than it was in 2020 because the Biden Administration's strategy for the region is adrift. Tunisia has slid into autocracy, Iraq is plummeting further into Iran's orbit, and U.S. soldiers continue to risk their lives for unclear ends amid the ruins of Syria. Meanwhile, billions of dollars in U.S. foreign aid props up regimes allied with Iran.

President Trump's Abraham Accords signaled the end of the centrality of the Arab–Israeli conflict, which paralyzed U.S. approaches to the region, and focused instead on Iran as the principal threat to America from this region. During the Trump Administration, USAID's allocations reflected the new opportunities created by the Accords and sought to strengthen regional alliances against Iran through expanded regional trade and investment and to promote genuine political stability tethered to strong American leadership. USAID formally partnered with the United Arab Emirates, Israel, Morocco, Qatar, and Kuwait to catalyze regional partnerships in Africa. Under the Biden Administration, however, USAID has returned to a model that deepens the region's dependence on aid.

A new conservative President should reset USAID's programming in the Middle East in line with our national security interests and committed to the goal of ending the need for foreign aid through development that is led by the private sector. Specifically:

- Foreign aid must advance the Abraham Accords. Increased trade and investment between Israel and its Arab neighbors represent the most effective path toward reducing poverty, fostering the emergence of a middle class, and solidifying peace. USAID should therefore focus its development assistance on countries such as Morocco and Sudan through joint investment collaboration with the more economically advanced economies such as the UAE and Israel.

- USAID should consider cutting aid to states allied to Iran, limiting assistance in these countries to the advancement of narrow strategic priorities and support for basic American values, such as aid to persecuted religious minorities. USAID continues to expend hundreds of millions of dollars in nonhumanitarian aid to antagonistic regimes in Iraq, Lebanon, and the Palestinian territories. After billions of dollars of aid and many

years of effort, these countries remain hopelessly dysfunctional—a fact that exposes the failure of a foreign aid model that is disconnected to our national security and without exit strategies to promote self-reliance. We must admit that USAID's investments in the education sector, for example, serve no other purpose than to subsidize corrupt, incompetent, and hostile regimes.

- USAID should undergo operational changes to secure better development outcomes by reducing its missions' footprints in the Middle East given that most personnel in the region are unable to leave their highly protected and expensive compounds and carry out their oversight functions. It should redirect program funding away from expensive and poorly performing international partners to more cost-effective local entities that require a minimal USAID field presence.

Africa. Since its inception, USAID has had a strong presence in Africa, saving millions of lives through its pandemic and infectious disease responses, especially for malaria and HIV-AIDS. It has led global efforts to provide lifesaving emergency assistance to those who are fleeing conflict and suffering from devastating natural disasters. American generosity knows no equal.

Yet the agency's efforts to reduce poverty and hunger have failed as it spends ever-higher amounts of aid partnering with a costly and ineffective aid industrial complex that has little interest in "working itself out of a job." Long-term, multibillion-dollar humanitarian responses lack exit strategies, while numerous development projects lead neither to measurable results nor to government reforms. Despite the tens of billions of dollars spent, the continent remains poor, unstable, and riven with conflict, corruption, and Islamic terrorism. This situation has also resulted in vast illegal migration from the continent.

Failure to generate wealth has provided opportunities for China to step in and become the continent's leader in trade, loans, and investment. As a result, Beijing controls most of the continent's strategic minerals that are critical to advanced technology. Moreover, USAID is criticized by Africans for exporting cultural values that are anathema to their traditional norms, further abetting Chinese continental supremacy.

The Biden Administration's radical global climate policies have cut off billions in investment to develop clean fossil fuels, denying Africa's billion-plus people access to cheap energy to further their own development and finance their own social services in health, water, education, and agriculture, while increasing its dependence on China's renewables industry. It has exacerbated hunger by increasing the costs of fertilizers to levels that many African farmers can no longer afford. Poverty-inducing dependence on aid grows daily.

USAID efforts in Africa require a rethink. In 2025, USAID will update its five-year Country Development and Cooperation Strategies. This will give the next Administration an opportunity to pursue a new development course for Africa that promotes economic self-reliance, catalyzes private-sector solutions for job creation through increased trade and investment, terminates legacy and nonperforming programs, and supports diversified energy approaches. Critically, it must hold China accountable for its extractive investments that violate international labor, environmental, and anticorruption norms and practices; undercut business opportunities for U.S. companies; and sabotage Africa's development.

- USAID, in collaboration with the U.S. International Development Finance Corporation, U.S. Department of State, U.S. Department of the Treasury, and U.S. Department of Commerce's Foreign Commercial Service, should use its convening power, diplomatic heft, and risk-reducing instruments to facilitate U.S.–African business relationships and expand Prosper Africa, launched by the Trump Administration to "bring[] together services from across the U.S. Government to help companies and investors do business in U.S. and African markets."[17]

- The Africa Growth and Opportunity Act (AGOA)[18] provides Africa duty-free access to U.S. markets. The next Administration should extend AGOA beyond its 2025 term but within a strategic framework that rewards good governance and pro–free market economic policies. There is no point in wasting massive sums of aid to countries whose governments fail to keep their promises to reform.

- USAID should build on, not compete with, private-sector initiatives launched by global churches, corporate philanthropists, and diaspora groups that have already invested billions of dollars in self-reliance–based projects.

Japan has committed $30 billion in aid to Africa over three years to stem China's economic and political grip on the continent. Gulf-based sovereign funds also are investing billions in African energy, infrastructure, mining, water, food production, information and communications technology, and other strategic industries. Other allied donors are promoting investment-based aid. There is no lack of funding to support Africa's economic rise. What is lacking is strategic direction among U.S. government foreign aid agencies.

PEPFAR has saved countless lives over the years and constitutes America's most successful aid program. During the Trump Administration, PEPFAR increased the share of funding to local entities from about 20 percent to nearly 70 percent with

commensurate improvements that have had lasting impact. The next Administration should extend that localization model to all global health and humanitarian assistance in view of how local African entities have strengthened their capacity for direct management of U.S. programs. Correspondingly, USAID should aggressively ramp down its partnerships with wasteful, costly, and politicized U.N. agencies, international NGOs, and Beltway contractors. All new programs in Africa should build on existing local initiatives that enjoy the support of the African people.

Latin America. U.S. foreign assistance throughout the Western Hemisphere is designed to respond to national security threats that emanate from the region, such as illicit drug and arms trafficking; illegal immigration flows; terrorism; pandemics; and strategic threats from China, Russia, and Iran. Over the past decade, the United States has provided billions of dollars in security, humanitarian, and development assistance in Central America and the Andes, including $1 billion in food and non-food emergency aid to millions of Venezuelan refugees who have fled the Maduro dictatorship. USAID is always first to respond to natural disasters in Central America and the Caribbean and employs a network of dedicated experts in the region to deliver this assistance. During the COVID pandemic, the United States provided millions of doses of vaccines and other emergency health support.

Yet years of foreign aid have failed to bring peace, prosperity, and stability to the hemisphere. Poverty, joblessness, and social unrest have led to leftist electoral victories from Mexico to Chile. These regimes are hostile to American interests and private enterprise, breed corruption, implement radical policies that will further impoverish their people and threaten their democracies, and are more open to striking partnerships with Communist China. Left-wing authoritarian kleptocracies in Cuba, Nicaragua, and Venezuela deny their people basic freedoms, violently and ruthlessly suppress any dissent, repress communities of faith, and generate such misery that hundreds of thousands of their citizens have attempted to cross our southern border over the past two years. No recent Administration has made any progress in reducing the chaos and desperation in Haiti.

Conversely, Latin America is a major global source of energy and food, which generates substantial income that can finance internal social and economic development. The nations of the hemisphere share a natural and massive geographic trade and investment advantage through their proximity to the United States, supplemented by free-trade agreements. The United States remains the favored destination for higher education and business opportunities for Latin Americans. Successful diasporas in the United States serve as powerful economic, cultural, and political bridges to every country in the region.

The Trump Administration focused on promoting trade and investment, especially in infrastructure, through an interagency effort called *América Crece* (America Grows), by which USAID played a key role in providing technical

assistance to create a more enabling environment to attract private investment. The Biden Administration canceled the program.

The next conservative Administration should reassess all programs of U.S. foreign aid to Latin America and terminate those that have failed to achieve results after years of effort. Instead, USAID should:

- Focus its resources on strengthening the fundamentals of free markets, such as clear property rights and a functioning judiciary, and on promoting labor and pension reforms, lower taxes, and deregulation in order to increase trade and investment within the region and with the United States as the genuine path to economic and political stability.

- Challenge the socialist ideas that have captured too many of the region's governments and their nations' youth.

- Fund partnerships with the private sector and support civil-society groups, including university centers and think tanks that advocate for pro–free market and democratic ideas.

Finally, Latin America is the perfect proving ground for reducing USAID's reliance on large U.S.-based implementers, and the agency should commit to shifting all of its portfolio in the region to local organizations by 2030.

PERSONNEL

The Trump Administration agenda for USAID was undercut from the outset both by recalcitrant career personnel and by inexperienced political personnel. The next conservative Administration should implement personnel policies from the beginning so that the agency can be effectively managed according to high standards. The rapid deployment of reforms will require key experienced personnel installed quickly at USAID's headquarters and missions. Delay will only impede progress. In general, areas of focus should be appointing effective lawyers in key positions, reforming career hiring/firing mechanisms, and getting a grip on the grantmaking process.

The Administration should staff the Office of the General Counsel with at least four politically appointed attorneys (besides the General Counsel). The General Counsel should have two political deputies, one of whom should cover Human Capital and Talent Management (HCTM) and the other the Office of Acquisition and Assistance (OAA).

The Administration should name a political appointee with long experience in federal personnel systems as USAID's Chief Human Capital Officer and Director of HCTM. This appointee would help to scope and shepherd position descriptions,

clearances, and other components of the hiring process that are necessary for immediate onboarding while coordinating with the White House to bring in new appointees and make internal career employee changes. On Day One, USAID should halt all agencywide training and replace it with training modules to advance the President's agenda.

The Administration should appoint a Senior Accountable Official (SAO) to report on the agency's adherence to Administration policy priorities, including on Protecting Life in Foreign Assistance, critical race theory, climate change, gender, and diversity and inclusion. It should also create a program to staff hard-to-fill positions overseas.

Finally, the Administration should create a recruiting program for veterans and other groups to participate in career job opportunities at USAID. Former missionaries, veterans, members of diasporas, and faith community stakeholders with overseas experience should be recruited to work at USAID on Schedule A appointments, as Institutional Services Contractors, as Personal Services Contractors, and as Foreign Service Officers.

CONCLUSION

The next conservative Administration will have a unique opportunity to realign U.S. foreign assistance with American national interests and the principles of good governance and more accurately reflect the U.S. taxpayer's unmatched charitable desire to help those in need. It can build on a strong baseline of conservative reforms undertaken by the Trump Administration to counter Communist China's strategy of world domination. However, this will require that bold steps are taken on Day One to undo the gross misuse of foreign aid by the current Administration to promote a radical ideology that is politically divisive at home and harms our global standing.

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but Dr. William Steiger, Bethany Kozma, and Dr. Alma Golden deserve special mention. The author assumes full responsibility for the content of this chapter, and no views expressed therein should be attributed to any other individual.

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Section Three

THE GENERAL WELFARE

When our Founders wrote in the Constitution that the federal government would "promote the general Welfare," they could not have fathomed a massive bureaucracy that would someday spend $3 trillion in a single year—roughly the sum, combined, spent by the departments covered in this section in 2022. Approximately half of that colossal sum was spent by the Department of Health and Human Services (HHS) alone—the belly of the massive behemoth that is the modern administrative state.

HHS is home to Medicare and Medicaid, the principal drivers of our $31 trillion national debt. When Congress passed and President Lyndon B. Johnson signed into law these programs, they were set on autopilot with no plan for how to pay for them. The first year that Medicare spending was visible on the books was 1967. From that point on through 2020—according to the American Main Street Initiative's analysis of official federal tallies—Medicare and Medicaid combined cost $17.8 trillion, while our combined federal deficits over that same span were $17.9 trillion. In essence, our deficit problem is a Medicare and Medicaid problem.

HHS is also home to the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH), the duo most responsible—along with President Joe Biden—for the irrational, destructive, un-American mask and vaccine mandates that were imposed upon an ostensibly free people during the COVID-19 pandemic. All along, it was clear from randomized controlled trials—the gold standard of medical research—that masks provide little to no benefit in preventing the spread of viruses and might even be counterproductive. Yet the CDC ignored these high-quality RCTs, cherry-picked from politically malleable

"observational studies," and declared that everyone except children and infants below the age of two should don masks. Under COVID, as former director of HHS's Office of Civil Rights Roger Severino writes in Chapter 14, the CDC exposed itself as "perhaps the most incompetent and arrogant agency in the federal government."

Nor is the CDC the only villain in this play. Severino writes of the National Institutes of Health, "Despite its popular image as a benign science agency, NIH was responsible for paying for research in aborted baby body parts, human animal chimera experiments"—in which the genes of humans and animals are mixed, "and gain-of-function viral research that may have been responsible for COVID-19." Severino writes that "Anthony Fauci's division of the NIH"—the National Institute of Allergy and Infectious Diseases—"owns half the patent for the Moderna COVID-19 vaccine," and "several NIH employees" receive "up to $150,000 annually from Moderna vaccine sales." That would be the same experimental mRNA vaccine that the CDC now wants to force on children, who are at little to no risk from COVID-19 but at great risk from public health officials.

The incestuous relationship between the NIH, CDC, and vaccine makers—with all of the conflict of interest it entails—cannot be allowed to continue, and the revolving door between them must be locked. As Severino writes, "Funding for scientific research should not be controlled by a small group of highly paid and unaccountable insiders at the NIH, many of whom stay in power for decades. The NIH monopoly on directing research should be broken." What's more, NIH has long "been at the forefront in pushing junk gender science." The next HHS secretary should immediately put an end to the department's foray into woke transgender activism.

HHS also pushes abortion as a form of "health care," skirting and sometimes blatantly defying the Hyde Amendment in the process. Severino writes that the "FDA should…reverse its approval of chemical abortion drugs because the politicized approval process was illegal from the start." In addition, HHS programs often violate the spirit, and sometimes the letter, of conscience-protection laws. Severino writes that the HHS "Secretary should pursue a robust agenda to protect the fundamental right to life, protect conscience rights, and uphold bodily integrity rooted in biological realities, not ideology." The next secretary should also reverse the Biden Administration's focus on "'LGBTQ+ equity,' subsidizing single-motherhood, disincentivizing work, and penalizing marriage," replacing such policies with those encouraging marriage, work, motherhood, fatherhood, and nuclear families.

If there is another department that has gone off the rails like HHS during the Obama and Biden Administrations, it is the once proud Department of Justice (DOJ). As former counselor to the attorney general Gene Hamilton writes in Chapter 17, the department "has a long and noble history"—Edmund Randolph, the first attorney general, took office the same year as President Washington—yet its

longstanding reputation has been marred by the Biden Administration's abuse of the department's powers for its own ends. Hamilton writes that the department's "unprecedented politicization and weaponization" under Biden and Attorney General Merrick Garland, resulting in "politically motivated and viewpoint-based prosecutions" of political enemies and indifference to the crimes of political allies, has made the department "a threat to the Republic." The most important thing for the next attorney general to do is to refocus the department on its core functions of "protecting public safety and defending the rule of law," while restoring its "values of independence, impartiality, honesty, integrity, respect, and excellence."

This is especially true of the Federal Bureau of Investigations (FBI). A bloated, arrogant, increasingly lawless organization, especially at the top, "the FBI views itself as an independent agency" that is "on par with the Attorney General," rather than as an agency that is under the AG and fully accountable to him or her. To rein in this "completely out of control" bureau and remind it of its place within—rather than at the top of—the DOJ hierarchy, Hamilton writes that the FBI's separate Office of General Counsel (with "approximately 300 attorneys"), separate Office of Legislative Affairs, and separate Office of Public Affairs should all be abolished. Requiring the FBI to get its legal advice from the wider department "would serve as a crucial check on an agency that has recently pushed past legal boundary after legal boundary." Indeed, Hamilton writes, "[t]he next conservative Administration should eliminate any offices within the FBI that it has the power to eliminate without any action from Congress."

Elsewhere, DOJ should target violent and career criminals, not parents; work to dismantle criminal organizations, partly by rigorously prosecuting interstate drug activity; and restart the Trump Administration's "China Initiative" (to address Chinese espionage and theft of trade secrets), which the Biden Administration "terminated…largely out of a concern for poor 'optics.'" It should also enforce existing federal law that prohibits mailing abortifacients, rather than harassing pro-life demonstrators; respect the constitutional guarantee of the freedom of speech, rather than trying to police speech on the internet; and enforce federal immigration laws, rather than pretending there is no border.

In contrast to DOJ's long history, the Department of Education (the department, or ED), discussed by Lindsey Burke in Chapter 11, is a creation of the Jimmy Carter Administration. The department is a convenient one-stop shop for the woke education cartel, which—as the COVID era showed—is not particularly concerned with children's education. Schools should be responsive to parents, rather than to leftist advocates intent on indoctrination—and the more the federal government is involved in education, the less responsive to parents the public schools will be. This department is an example of federal intrusion into a traditionally state and local realm. For the sake of American children, Congress should shutter it and return control of education to the states.

Short of this, the Secretary of Education should insist that the department serve parents and American ideals, not advocates whose message is that children can choose their own sex, that America is "systemically racist," that math itself is racist, and that Martin Luther King, Jr.'s ideal of a colorblind society should be rejected in favor of reinstating a color-conscious society. The next head of this department will have a lot to do—hopefully culminating in the department's closure and the salutary restoration of educational control to states, localities, and parents.

The next Secretary of Energy will similarly have much work to do. Under the next President, the Department of Energy should end the Biden Administration's unprovoked war on fossil fuels, restore America's energy independence, oppose eyesore windmills built at taxpayer expense, and respect the right of Americans to buy and drive cars of their own choosing, rather than trying to force them into electric vehicles and eventually out of the driver's seat altogether in favor of self-driving robots. As former commissioner of the Federal Energy Regulatory Commission Bernard L. McNamee says in Chapter 12, "A conservative President must be committed to unleashing all of America's energy resources and making the energy economy serve the American people, not special interests."

In Chapter 10, Daren Bakst writes that the Biden Administration's Department of Agriculture claims to be "transforming the food system as we know it." But the government "does not need to transform the food system"; instead, "it should respect American farmers, truckers," and families. In Chapter 13, former chief of staff at the Environmental Protection Agency Mandy Gunasekara writes that the EPA's "current activities and staffing levels far exceed its congressional mandates and purpose," whereas its "initial success" in its "infancy" (in the 1970s) was a product of "clear mandates, a streamlined structure, [and] recognition of the states' prominent role." Having since become a "coercive" agency, full of embedded activists, its "structure and mission should be greatly circumscribed."

Former secretary of the Department of Housing and Urban Development Dr. Benjamin S. Carson writes in Chapter 15 that HUD is beset with "mission creep" and regularly crosses the line into exercising quasi-legislative powers. In the next Administration, it should refocus on its core duties and keep "noncitizens…from living in federally assisted housing," provide enhanced "oversight of foreign ownership of [U.S.] real estate," and "reinvigorate paths to upward economic mobility" and economic "self-sufficiency." In Chapter 18, former acting assistant secretary of policy at the Department of Labor Jonathan Berry writes that the department and related agencies should pursue pro-family, pro-worker policies to help "restore the family-supporting job as the centerpiece of the American economy," in lieu of the current Administration's "left-wing social-engineering agenda"—"the most assertive" in history—which empowers race, gender, and climate-change activists at the expense of American workers.

In Chapter 19, on the Department of Transportation (DOT), former DOT deputy assistant director for research and technology Diana Furchtgott-Roth writes, "In pursuit of an anti-fossil-fuel climate agenda never approved by Congress, the Biden Administration has raised fuel economy requirements to levels that cannot realistically be met" by most gas-powered cars, thereby reducing Americans' freedom while increasing costs. Lastly, former acting chief of staff at the Department of Veterans Affairs Brooks D. Tucker, echoing concerns expressed in other chapters, writes in Chapter 20 that the Veterans Affairs (VA) must be "accountable to the needs and problems of veterans, not subservient to the parochial preferences of the bureaucracy."

10

DEPARTMENT OF AGRICULTURE

Daren Bakst

American farmers efficiently and safely produce food to meet the needs of individuals around the globe. Because of the innovation and resilience of the nation's farmers, American agriculture is a model for the world. If farmers are allowed to operate without unnecessary government intervention, American agriculture will continue to flourish, producing plentiful, safe, nutritious, and affordable food.

The U.S. Department of Agriculture (USDA) can and should play a limited role, with much of its focus on removing governmental barriers that hinder food production or otherwise undermine efforts to meet consumer demand. The USDA should recognize what should be self-evident: Agricultural production should first and foremost be focused on efficiently producing safe food.

This chapter provides important background on the USDA and identifies many of the USDA-specific issues that will be faced by an incoming Administration. It provides specific recommendations for the next Administration about how to address these issues and lays out a conservative vision for what the USDA should look like in the future.

MISSION STATEMENT

The current mission statement as stated by the Biden Administration highlights the broad scope of the USDA:

> To serve all Americans by providing effective, innovative, science-based public policy leadership in agriculture, food and nutrition, natural resource

> protection and management, rural development, and related issues with a commitment to delivering equitable and climate smart opportunities that inspire and help America thrive.[1]

The first part of the mission statement regarding the issues covered is not new to the Biden Administration; it reflects the overly broad nature of the USDA's work. However, the language bringing in equity and climate change is new to the Biden Administration and part of the USDA's express effort to transform agricultural production.[2]

The USDA's new vision statement illuminates the focus of this effort:

> An equitable and climate smart food and agriculture economy that protects and improves the health, nutrition and quality of life of all Americans, yields healthy land, forests and clean water, helps rural America thrive, and feeds the world.[3]

This effort is one of a federal central plan to put climate change and environmental issues ahead of the most important requirements of agriculture—to efficiently produce safe food. The USDA would apparently use its power to change the very nature of the food and agriculture economy into one that is "equitable and climate smart." As an initial matter, the USDA should not try to control and shape the economy, but should instead remove obstacles that hinder food production. Further, it should not place ancillary issues, such as environmental issues, ahead of agricultural production itself.

A Proper Mission Statement. Even before the Biden Administration's radical effort to reshape the USDA's work, the USDA's mission was and is too broad, including serving as a major welfare agency through implementation of programs such as food stamps. This far-reaching mission is not the fault of the USDA, but of Congress, which has given the department its extensive power.

Congress must limit the USDA's role. A proper mission would clarify that the department's primary focus is on agriculture and that the USDA serves all Americans. The USDA's "client" is the American people in general, not a subset of interests, such as farmers, meatpackers, environmental groups, etc.

Within this agricultural focus, the USDA should develop and disseminate information and research (the historical role of the USDA); identify and address concrete threats to public health and safety arising directly from food and agriculture; remove unjustified foreign trade barriers blocking market access for American agricultural goods; and generally remove government barriers that undermine access to safe and affordable food across the food supply chain.

Core principles should be included within any mission statement, including a recognition that farmers, and the food system in general, should be free from unnecessary government intervention. Further, there should be clear statements

about the importance of sound science to inform the USDA's work and respect for personal freedom and individual dietary choices, private property rights, and the rule of law.

Taking these factors into account, below is a model USDA mission statement:

> To develop and disseminate agricultural information and research, identify and address concrete public health and safety threats directly connected to food and agriculture, and remove both unjustified foreign trade barriers for U.S. goods and domestic government barriers that undermine access to safe and affordable food absent a compelling need—all based on the importance of sound science, personal freedom, private property, the rule of law, and service to all Americans.

OVERVIEW

In 1862, President Abraham Lincoln signed into law the legislation that created the USDA.[4] The department had a very narrow mission focused on the dissemination of information connected to agriculture and "to procure, propagate and distribute among the people new valuable seeds and plants."[5] During the last 160 years, the scope of the USDA's work has expanded well beyond that narrow mission—and well beyond agriculture itself. In addition to being a distributor of farm subsidies, the USDA runs the food stamp program and other food-related welfare programs and covers issues including conservation, biofuels, forestry, and rural programs.

Based on the USDA's fiscal year (FY) 2023 budget summary, outlays are estimated at $261 billion: $221 billion for mandatory programs and $39 billion for discretionary programs.[6] These outlays are broken down as follows: nutrition assistance (70 percent); farm, conservation, and commodity programs (14 percent); "all other," which includes rural development, research, food safety, marketing and regulatory, and departmental management (11 percent); and forestry (5 percent).[7]

The USDA has provided a summary of its size, explaining, "Today, USDA is comprised of 29 agencies organized under eight Mission Areas and 16 Staff Offices, with nearly 100,000 employees serving the American people at more than 6,000 locations across the country and abroad."[8]

MAJOR PRIORITY ISSUES AND SPECIFIC RECOMMENDATIONS

For an incoming Administration, there are numerous issues that should be addressed at the USDA. This chapter identifies and discusses many of the most important issues. The initial issues discussed should be priority issues for the next Administration:

Defend American Agriculture. It is deeply unfortunate that the first issue identified must be a willingness of the incoming Administration to defend American agriculture, but this is precisely what the top priority for that Administration

should be. As previously discussed, the Biden Administration is seeking to use the federal government to transform the American food system.[9] The USDA web site explains:

> The U.S. Department of Agriculture (USDA), alongside Biden–Harris Administration leadership and the people of this great country, has embarked on another historic journey: transforming the food system as we know it—from farm to fork, and at every stage along the supply chain.[10]

The federal government does not need to transform the food system or develop a national plan to intervene across the supply chain. Instead, it should respect American farmers, truckers, and everyone who makes the food supply chain so resilient and successful. One of the important lessons learned during the COVID-19 pandemic was how critical it is to *remove* barriers in the food supply chain—not to increase them.

The Biden Administration's centrally planned transformational effort minimizes the importance of efficient agricultural production and instead places issues such as climate change and equity front and center. The USDA's *Strategic Plan Fiscal Years 2022–2026* identifies six strategic goals, the first three of which focus on issues such as climate change, renewable energy, and systemic racism. In the Secretary of Agriculture's message, there is only one mention of affordable food—and nothing about efficient production and the incredible innovation and respect for the environment that already exists within the agricultural community.[11]

The Biden Administration's USDA strongly supported[12] the recent United Nations (U.N.) Food Systems Summit. According to the USDA:

> The stated goal of the Food Systems Summit was to transform the way the world produces, consumes and thinks about foods within the context of the 2030 Agenda for Sustainable Development and to meet the challenges of poverty, food security, malnutrition, population growth, climate change, and natural resource degradation.[13]

Not unlike those who oppose reliable and affordable energy production, there is a disdain, especially by some on the Left, for American agriculture and the food system.[14] The Biden Administration's vision of a federal government developing a plan that "fixes" agriculture and focuses on issues secondary to food production is very disturbing.

A recent USDA-created program captures both the disrespect for American farmers and the Biden Administration's effort to dictate agricultural practices. The USDA explained that it was concerned with farmers not transitioning to organic farming, and therefore announced that it will dedicate $300 million to

induce farmers to adopt organic farming.[15] There was no recognition that farmers know how to farm better than D.C. politicians[16] or a that organic food is expensive[17] and land-intensive.[18] The Biden Administration has also been pushing so-called "climate-smart"[19] agricultural practices which received additional support in the partisan Inflation Reduction Act.[20]

American agriculture should not need defending. According to the USDA's latest data, farm output nearly tripled (a 175 percent increase) from 1948 to 2019, while the amount of land farmed decreased. In fact, as farm output increased by 175 percent, *all* agricultural inputs increased by only 4 percent.[21]

In 2021, despite high food prices—a major problem and regressive—American consumers spent an average of about 10 percent of their personal disposable income on food, which is close to historic lows. For decades, this share has been in decline.[22] America's farmers efficiently produce food using fewer resources, making it possible for food to be affordable. This reality is not only something that should be defended but also touted as a prime example of what makes American agriculture so successful. The connection between efficiency and affordability seems lost in the Biden Administration's effort to transform the food system.

RECOMMENDATIONS

Proactively Defend Agriculture. From the outset, the next Administration should: Denounce efforts to place ancillary issues like climate change ahead of food productivity and affordability when it comes to agriculture.

- Remove the U.S. from any association with U.N. and other efforts to push sustainable-development schemes connected to food production.
- Defend American agriculture and advance the critical importance of efficient and innovative food production, especially to advance safe and affordable food.
- Stress that ideal policy should remove obstacles imposed on American farmers and individuals across the food supply chain so that they can meet the food needs of Americans.
- Clarify the critical importance of efficiency to food affordability, and why a failure to recognize this fact especially hurts low-income households who spend a disproportionate share of after-tax income on food compared to higher-income households.[23]

To accomplish these objectives, a new Administration should announce its principles through an executive order, the USDA should remove all references

to transforming the food system on its web site and other department-disseminated material, and it should expressly and regularly communicate the principles informing the objectives listed above, as well as promote these principles through legislative efforts. The USDA should also carefully review existing efforts that involve inappropriately imposing its preferred agricultural practices onto farmers.

Address the Abuse of CCC Discretionary Authority. With the exception of federal crop insurance, the Commodity Credit Corporation (CCC) is generally the means by which agricultural-related farm bill programs are funded. The CCC is a funding mechanism, which, in simple terms, has $30 billion a year at its disposal.[24]

Section 5 of the Commodity Credit Corporation Charter Act (Charter Act)[25] gives the Secretary of Agriculture broad discretionary authority to spend "unused" CCC money. However, in general, past Agriculture Secretaries have not used this power to any meaningful extent. This changed dramatically during the Trump Administration, when this discretionary authority was used to fund $28 billion in "trade aid" to farmers, consisting primarily of the Market Facilitation Program. In 2020, this authority was used for $20.5 billion in food purchases and income subsidies in response to the COVID-19 pandemic.[26]

At the time, critics warned that this use of the CCC, which in effect created a USDA slush fund, would lead future Administrations to abuse the CCC, such as by pushing climate-change policies.[27] Predictably, this is precisely what the Biden Administration has done, using the discretionary authority to create programs out of whole cloth, arguably without statutory authority,[28] for what it refers to as climate-smart agricultural practices.[29]

The merits of the various programs funded through the CCC discretionary authority is not the focus of this discussion. The major problem is that the Secretary of Agriculture is empowered to use a slush fund. Billions of dollars are being used for programs that Congress never envisioned or intended.

Concern about this type of abuse is not new. In fact, from 2012 to 2017, Congress expressly limited the Agriculture Secretary's discretionary spending authority under the Charter Act.[30] And this was *before* the recent massive discretionary CCC spending occurred.

The use of the discretionary power is a separation of powers problem, with Congress abrogating its spending power. This power is ripe for abuse—as could be expected with any slush fund—and it is a possible way to get around the farm bill process to achieve policy goals not secured during the legislative process.

The next Administration should:

- **Refrain from using section 5 discretionary authority.** The USDA can address this abuse on its own by following the lead of most Administrations and not using this discretionary authority.

- **Promote legislative fixes to address abuse.** Ideally, Congress would repeal the Secretary's discretionary authority under section 5 of the Charter Act. There is no reason to maintain such authority. If Congress needs to spend money to assist farmers, it has legislative tools, including the farm bill and the annual appropriations process, to do so in a timely fashion. While not an ideal solution, Congress could also amend the Charter Act to require prior congressional approval through duly enacted legislation before any money is spent.

At a minimum, Congress should amend the Charter Act to:

- Limit spending to directly help farmers and ranchers address issues due to unforeseen events not already covered by existing programs and that constitute genuine emergencies that must be addressed immediately.

- Prohibit the CCC from being used to assist parties beyond farmers and ranchers.

- Clarify that spending is only to address problems that are temporary in nature and ensure that funding is targeted to address such problems.

- Tighten the discretion within section 5 and identify ways for improper application of the Charter Act to be challenged in court.

Reform Farm Subsidies. Too often, agricultural policy becomes synonymous with farm subsidy policy. This is unfortunate, because making them synonymous fails to recognize that agricultural policy covers a wide range of issues, including issues that are outside the proper scope of the USDA, such as environmental regulation.

However, there is no question that farm subsidies are an important issue within agricultural policy that should be addressed by any incoming Administration. There are several principles that even subsidy supporters would likely agree upon, including the need to reduce market distortions. Subsidies should not influence planting decisions, discourage proper risk management and innovation, incentivize planting on environmentally sensitive land, or create barriers to entry for new farmers. Farm subsidies can lead to these market distortions and therefore, it would hardly be controversial to ensure that any subsidy scheme should be designed to avoid such problems.

The overall goal should be to eliminate subsidy dependence. Despite what might be conventional wisdom, many farmers receive few to no subsidies,[31] with most subsidies going to only a handful of commodities. According to the Congressional Research Service (CRS), from 2014 to 2016, 94 percent of farm program

support went to just six commodities—corn, cotton, peanuts, rice, soybeans, and wheat—that together account for only 28 percent of farm receipts.[32] Although many farmers do not receive much in the way of subsidies, especially those in the areas of livestock and specialty crops (fruit, vegetable, and nuts),[33] there are still a significant number of farmers growing row crops like corn and cotton that do receive significant farm subsidies.

The primary subsidy programs include the Agriculture Risk Coverage (ARC) program,[34] the Price Loss Coverage (PLC) program,[35] and the federal crop insurance program.[36] Farmers can participate on a crop-by-crop basis in the ARC program or the PLC program. These programs cover about 20 different crops.[37] The ARC program protects farmers from what are referred to as "shallow" losses, providing payments when their actual revenues fall below 86 percent of the expected revenues for their crops.[38] The PLC program provides payments to farmers when commodity prices fall below a fixed, statutorily established reference price.[39]

The federal crop insurance program is broader in scope than ARC and PLC, and in crop year 2019 covered 124 commodities.[40] Farmers pay a portion of a premium to participate in the program. Taxpayers on average pay about 60 percent[41] of the premium. As explained by CRS, "Revenue Protection was the most frequently purchased policy type in 2019, accounting for almost 70 [percent] of policies purchased."[42]

While there are certainly other subsidy programs besides ARC, PLC, and federal crop insurance, one program that deserves special mention is the federal sugar program. This program, unlike most other subsidy programs, intentionally tries to restrict supply[43] and thereby drives up prices. The program costs consumers as much as $3.7 billion a year.[44]

When it comes to reforming subsidy programs, the next Administration will primarily have to look to legislative solutions. The next Administration should champion legislation that would:

- **Repeal the federal sugar program.** The federal government should not be in the central planning business, and the sugar program is a prime example of harmful central planning. Its very purpose is to limit the sugar supply in order to increase prices. The program has a regressive effect, since lower-income households spend more of their money to meet food needs compared to higher income households.[45]

- **Ideally, repeal the ARC and PLC programs.** Farmers eligible to participate in ARC or PLC are generally already able to purchase federal crop insurance, policies that protect against shortfalls in expected revenue whether caused by lower prices or smaller harvests. The ARC program is especially egregious because farmers are being protected from shallow

losses, which is another way of saying minor dips in expected revenue. This is hardly consistent with the concept of providing a safety net to help farmers when they fall on hard times. The Congressional Budget Office (CBO), in one of its options to reduce the federal deficit, has once again identified repealing all Title I farm programs, including ARC, PLC, and the federal sugar program.[46]

- **Stop paying farmers twice for price and revenue losses during the same year.** Farmers can receive support from the ARC or PLC programs *and* the federal crop insurance program to cover price declines and revenue shortfalls *during the same year*. Congress should prohibit this duplication by prohibiting farmers from receiving an ARC or PLC payment the same year they receive a crop insurance indemnity.

- **Reduce the premium subsidy rate for crop insurance.** On average, taxpayers cover about 60 percent[47] of the premium cost for policies purchased in the federal crop insurance program. One of the most widely supported and bipartisan policy reforms is to reduce the premium subsidy that taxpayers are forced to pay.[48] At a minimum, taxpayers should not pay more than 50 percent of the premium. After all, taxpayers should not have to pay more than the farmers who benefit from the crop insurance policies.

  CBO has found that reducing the premium subsidy to 47 percent would save $8.1 billion over 10 years and have little impact on crop insurance participation or on the number of covered acres.[49] In that analysis, there would be a reduction in insured acres of just one-half of 1 percent, and only 1.5 percent of acres would have lower coverage levels. [50] This reform is basically all benefit with little to no cost. In its recently released report identifying options to reduce the federal deficit, CBO found that reducing the premium subsidy to 40 percent would save $20.9 billion over 10 years.[51]

Beyond these legislative reforms, the next Administration should:

- **Communicate to Congress the necessity of transparency and a genuine reform process.** The White House and the USDA should make it very clear that the farm bill process, including reform of farm subsidies, must be conducted through an open process with time for mark-up and the opportunity for changes to be made outside the Agriculture Committee process.

  The farm bill too often is developed behind closed doors and without any chance for real reform. The White House, given the power of the bully pulpit,

must demand a genuine reform process and express unwavering support for a USDA that shapes a safety net that considers the interests of farmers, while also remembering the interests of taxpayers and consumers. Any safety net for farmers should be a true safety net—one that helps farmers when they have experienced serious unforeseen losses (preferably when there has been a disaster or unforeseen natural event causing damage) and that exists to help them in unusual situations.

- **Separate the agricultural provisions of the farm bill from the nutrition provisions.** To have genuine reform and proper consideration of the issues, agricultural programs should be considered in separate legislation distinct from food stamps and the nutrition part of the farm bill, and reauthorization of such programs should be fixed on different timelines to ensure this separation. Agricultural and nutritional programs, which are distinct from each other, have been combined together for political reasons, something which is readily admitted by proponents of this logrolling. When it comes to American agriculture and welfare programs, they deserve sound policy debates, not political tactics at the expense of thoughtful discourse.

Move the Work of the Food and Nutrition Service. The USDA implements many means-tested federal support programs, including the largest food assistance program, Supplemental Nutrition Assistance Program (SNAP, also known as food stamps), and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Food Program. The Food and Nutrition Service (FNS) oversees these programs and other food and nutrition programs, including the Center for Nutrition Policy and Promotion,[52] which handles the USDA's work on the "Dietary Guidelines for Americans" (Dietary Guidelines).[53] Food nutrition programs include: SNAP; WIC; the National School Lunch Program (NSLP); the School Breakfast Program (SBP); the Child and Adult Care Food Program; the Nutrition Program for the Elderly; Nutrition Service Incentives; the Summer Food Service Program; the Commodity Supplemental Food Program; the Temporary Emergency Food Program; the Farmer's Market Nutrition Program; and the Special Milk Program.

The next Administration should:

- **Move the USDA food and nutrition programs to the Department of Health and Human Services.** There are more than 89 current means-tested welfare programs, and total means-tested spending has been estimated to surpass $1.2 trillion between federal and state resources.[54] Because means-tested federal programs are siloed and administered in separate agencies, the effectiveness and size of the welfare state remains

largely hidden. There are means-tested food-support programs in the USDA (specially FNS), whereas most means-tested programs are at the Department of Health and Human Services (HHS). All means-tested anti-poverty programs should be overseen by one department—specifically HHS, which handles most welfare programs.

Reform SNAP. Ostensibly, SNAP sends money through electronic-benefit-transfer (EBT) cards to help "low-income" individuals buy food. It is the largest of the federal nutrition programs. Food stamps are designed to be supplemented by other forms of income—whether through paid employment or nonprofit support. SNAP serves 41.1 million individuals—an increase of 4.3 million people during the Biden years.[55] In 2020, the food stamp program cost $79.1 billion. That number continued to rise—by 2022, outlays hit $119.5 billion.[56]

The next Administration should:

- **Re-implement work requirements.** The statutory language covering food stamps allows states to waive work requirements that otherwise apply to work-capable individuals—that is, adult beneficiaries between the ages 18 and 50 who are not disabled and do not have any children or other dependents in the home.[57]

  Even in a strong economy, work expectations are fairly limited: Individuals who are work-capable and without dependents are required to work or prepare for work for 20 hours per week.[58] The work requirements are then implemented unless the state requests a waiver from the USDA's Food and Nutrition Services.[59] Waivers from statutory work requirements can be approved in two instances: an unemployment rate of more than 10 percent or a lack of sufficient jobs.[60]

  The Trump Administration bolstered USDA work expectations in the food stamp program. In February 2019, FNS issued a modest regulatory change that applied only to able-bodied individuals without dependents—beneficiaries aged 18 to 49, not elderly or disabled, who did not have children or other dependents in the home (ABAWD).[61] The FNS rule changed when a state could receive a waiver from implementing the ABAWD work requirement.

  Under the new rule, in order to waive the work requirement, the state's unemployment rate had to be above 6 percent for more than 24 months. The rule also defined "area" in such a way that states would be unable to combine non-contiguous counties in order to maximize their waivers.[62] Of

the more than 40 million food stamp beneficiaries, the Trump rule would have applied only to 688,000 individuals in fiscal year 2021.[63]

The Trump reform was scheduled to go into effect, but a D.C. district court federal judge enjoined the rule.[64] The USDA filed an appeal in late December 2020,[65] but the Biden Administration withdrew from defending the challenge, and the rule was never implemented.[66]

Beyond the able-bodied work requirement, FNS should implement better regulation to clarify options for states to implement the general work requirement. This requirement is an option states can apply to work-capable beneficiaries aged 16 to 59. If beneficiaries' work hours are below 30 hours a week, states can implement the general work requirements to oblige beneficiaries to register for work or participate in SNAP Employment and Training or workfare assigned by the state SNAP agency.[67] Increased clarity for states would include items like states being required to offer employment and training spots for those that request them—not simply budgeting for every currently enrolled able-bodied adult.

- **Reform broad-based categorical eligibility.** Federal law permits states to enroll individuals in food stamps if they receive a benefit from another program, such as the Temporary Assistance for Needy Families (TANF) program. However, under an administrative option in TANF called broad-based categorical eligibility (BBCE), "benefit" is defined so broadly that it includes simply receiving distributed pamphlets and 1–800 numbers.[68] This definition, with its low threshold to trigger a "benefit," allows individuals to bypass eligibility limits—particularly the asset requirement (how much the applicant has in resources, such as bank accounts or property).[69] Adopting the BBCE option has even allowed millionaires to enroll in the food stamp program.[70]

  The Trump Administration proposed to close the loophole with a rule to "increase program integrity and reduce fraud, waste, and abuse."[71] The regulation was not finalized before the end of the Trump Administration.

- **Re-evaluate the Thrifty Food Plan.** In a dramatic overreach, the Biden Administration unilaterally increased food stamp benefits by at least 23 percent in October 2021.[72] Through an update to the Thrifty Food Plan, in which the USDA analyzes a basket of foods intended to provide a nutritious diet, the USDA increased food stamp outlays by between $250 billion and $300 billion over 10 years.[73]

Although the 2018 farm bill instructed FNS to update the Thrifty Food Plan by 2023 and every five years thereafter, every previous Thrifty Food Plan has been always cost-neutral (just an inflation update)—exactly what CBO estimated as cost of the 2018 farm bill.[74]

The Biden Administration may have skirted regulations and congressional authority to increase the overall cost of the program. In fact, Senate and House Republicans requested that the Government Accountability Office investigate the legal authorities and process that the USDA undertook to arrive at such an unprecedented increase.[75]

- **Eliminate the heat-and-eat loophole.** States can artificially boost a household's food stamp benefit by using the heat-and-eat loophole. The amount of food stamps a household receives is based on its "countable" income (income minus certain deductions). Households that receive benefits from the Low-Income Heat and Energy Assistance Program (LIHEAP) are eligible for a larger utility deduction. In order to make households eligible for the higher deduction, and thus for greater food stamp benefits, states have distributed LIHEAP checks for amounts as small as $1 to food stamp recipients.

The 2014 farm bill tightened this loophole by requiring that a household must receive more than $20 annually in LIHEAP payments to be eligible for the larger utility deduction and subsequently higher food stamp benefits.[76] Nonetheless, states continue to inflate their standard utility allowances. Under the Trump Administration, the USDA proposed a rule, which was not finalized, that would have standardized the utility allowance.[77]

Reform WIC. Turning to WIC, this program distributes money through EBT cards to help low-income women, infants, and children under six purchase nutrition-rich foods and nutrition education (including breastfeeding support). As of August 2022, approximately 6.3 million people participated in WIC each month to purchase food.[78] In 2021, WIC federal outlays were $5 billion.[79]

The next Administration should:

- **Reform the state voucher system.** State agencies control WIC costs by approving only one brand of infant formula through competitive bidding for infant formula rebate contracts. Because *50 percent* of baby formula is purchased through the federal WIC program, it is vital that regulation for these competitive bidding contracts does not unintentionally create monopolies.

- **Re-evaluate excessive regulation.** As for baby formula regulations generally, labeling regulations and regulations that unnecessarily delay the manufacture and sale of baby formula should be re-evaluated.[80] During the Biden Administration, there have been devastating baby formula shortages.

Return to the Original Purpose of School Meals. Federal meal programs for K–12 students were created to provide food to children from low-income families while at school.[81] Today, however, federal school meals increasingly resemble entitlement programs that have strayed far from their original objective and represent an example of the ever-expanding federal footprint in local school operations.

The NSLP and SBP are the two largest K–12 meal programs provided by federal taxpayer money. The NSLP launched in 1946 and the SBP in 1966, both as options specifically for children in poverty.[82] During the COVID-19 pandemic, federal policymakers temporarily expanded access to school meal programs, but some lawmakers and federal officials have now proposed making this expansion permanent.[83] Yet even before the pandemic, research found that federal officials had already expanded these programs to serve children from upper-income homes, and these programs are rife with improper payments and inefficiencies.

Heritage Foundation research from 2019 found that after the enactment of the Community Eligibility Provision (CEP) in 2010, the share of students from middle- and upper-income homes receiving free meals in states that participated in CEP doubled, and in some cases *tripled*—all in a program meant for children from families with incomes at or below 185 percent of the federal poverty line (Children from homes at or below 130 percent of the federal poverty line are eligible for free lunches, while students from families at or below 185 percent of poverty are eligible for reduced-priced lunches).[84]

Under CEP, if 40 percent of students in a school or school district are eligible for federal meals, *all* students in that school or district can receive free meals. However, the USDA has taken it even further, improperly interpreting the law[85] to allow a subset of schools within a district to be grouped together to reach the 40 percent threshold, As a result, a school with zero low-income students could be grouped together with schools with high levels of low-income students, and as a result all the students in the schools within that group (even schools without a single low-income student) can receive free federal meals.[86] Schools can direct resources meant for students in poverty to children from wealthier families.

Furthermore, the NSLP and SBP are among the most inaccurate federal programs according to PaymentAccuracy.gov, a project of the U.S. Office of Management and Budget and the Office of the Inspector General.[87] Before federal auditors reduced the rigor of annual reporting requirements in 2018, the NSLP had wasted nearly $2 billion in taxpayer resources through payments provided to ineligible recipients.[88] Even after the auditing changes, which the U.S. Government

Accountability Office said results in the USDA not "regularly assess[ing] the programs' fraud risks," the NSLP wasted nearly $500 million in FY 2021.[89] The SBP now wastes nearly $200 million annually.[90]

Despite the ongoing effort to expand school meals under CEP and the evidence of waste and inefficiency, left-of-center Members of Congress and President Biden's Administration have nonetheless proposed further expansions to extend federal school meals to include every K–12 student—regardless of need.[91] The Administration recently proposed expanding federal school meal programs offered during the school year to be offered during the summer as part of the "American Families Plan," and also proposed expanding CEP. Other federal officials, including Senator Bernie Sanders (I–VT), have, in recent years, proposed expanding the NSLP to all students.[92]

To serve students in need and prevent the misuse of taxpayer money, the next Administration should focus on students in need and reject efforts to transform federal school meals into an entitlement program.

Specifically, the next Administration should:

- **Promulgate a rule properly interpreting CEP.** The USDA should issue a rule that clarifies that only an individual school or a school district as a whole, not a subset of schools within a district, must meet the 40-percent criteria to be eligible for CEP. Education officials should be prohibited from grouping schools together.

- **Work with lawmakers to eliminate CEP.** The NSLP and SBP should be directed to serve children in need, not become an entitlement for students from middle- and upper-income homes. Congress should eliminate CEP. Further, the USDA should not provide meals to students during the summer unless students are taking summer-school classes. Currently, students can get meals from schools even if they are not in summer school, which has, in effect, turned school meals into a federal catering program.[93]

- **Restore programs to their original intent and reject efforts to create universal free school meals.** The USDA should work with lawmakers to restore NSLP and SBP to their original goal of providing food to K–12 students who otherwise would not have food to eat while at school.

Federal school meals should be focused on children in need, and any efforts to expand student eligibility for federal school meals to include all K–12 students should be soundly rejected. Such expansion would allow an inefficient, wasteful program to grow, magnifying the amount of wasted taxpayer resources.

Reform Conservation Programs. Farmers, in general, are excellent stewards of the land, if not for moral or ethical considerations, then out of self-interest to

make sure their land and—by extension, their livelihoods—remain intact. Farmers are often called the original conservationists.[94]

When evaluating federal conservation programs, it is important to remember the importance of the land to farmers. In terms of USDA federal conservation programs, both the USDA's Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS) oversee numerous programs.[95]

As a general matter, the next Administration should ensure that these programs address genuine and specific environmental concerns with a focus on currently existing environmental problems, not those that are speculative in nature. These conservation programs should have clearly identifiable goals, with the success or failure of these programs being directly measurable. Any assistance to farmers to take specific actions should not be provided unless the assistance will directly and clearly help to address a specific environmental problem. Further, any assistance to encourage farmers to engage in certain practices should only be provided if farmers would not have adopted the practices in the first place.

There are specific issues that the next Administration should address. The Conservation Reserve Program,[96] which is run by FSA, pays farmers to *not* farm some of their land. This program has recently received attention, as agricultural groups rightfully seek to farm without penalty voluntarily idled land, in light of the consequences to food prices of Russia invading Ukraine.[97]

There is also a need to reform USDA's conservation easements. These easements are a powerful tool to incentivize long-term preservation of ecosystems while still allowing farmers to benefit economically. However, when farmers and ranchers sign conservation easements with the USDA, they can be enforced in perpetuity. Future generations, be they the descendants of the landowner or new residents, are bound by those conditions.

Ecosystems and topography naturally change over time, but without legislative change, easement requirements will not.

The next Administration should:

- **Champion the elimination of the Conservation Reserve Program.** Farmers should not be paid in such a sweeping way *not* to farm their land. If there is a desire to ensure that extremely sensitive land is not farmed, this should be addressed through targeted efforts that are clearly connected to addressing a specific and concrete environmental harm. The USDA should work with Congress to eliminate this overbroad program.

- **Reform NRCS wetlands and erodible land compliance and appeals.** Problematic NRCS overreach could be avoided entirely by removing its authority to prescribe specific practices on a particular farm operation in order to ensure continued eligibility to participate in USDA farm programs,

and to require instead that each farm (as a function of eligibility) must have created a general best practices plan. Such a plan could be approved by the local county Soil and Water Conservation District (SWCD). The local SWCD commissioners are elected by their peers in each respective county and are better suited than the NRCS to provide guidance for farm operations in their respective jurisdictions.

At a minimum, a new Administration should support legislation to divest more power to the states (and possibly local SWCDs) regarding erodible land and wetlands conservation.[98]

- **Reform easements.** The new Administration should, to the extent authorized by law, limit the use of permanent easements and collaborate with lawmakers to prohibit the USDA from creating new permanent easements.[99]

Other Major Issues and Specific Recommendations. Although the following issues have not been listed as "priority," these issues are still extremely important, and the next Administration should address them.

Only meat and poultry from federally inspected facilities can be sold in interstate commerce.[100] Even meat and poultry from USDA-approved state-inspected facilities may only be sold in intrastate commerce, with limited exceptions.[101] This is despite the fact that states with USDA-approved inspection programs must meet and enforce requirements that are "at least equal to" those imposed under the Federal Meat and Poultry Products Inspection Acts and the Humane Methods of Slaughter Act of 1978.[102] This is an unnecessary regulatory barrier that makes it difficult to get meat and poultry into interstate commerce to create more options for consumers and farmers. Legislation entitled the New Markets for State-Inspected Meat and Poultry Act of 2021 would help to remove this obstacle.[103]

The next Administration should:

- **Promote legislation that would allow state-inspected meat to be sold in interstate commerce.** These barriers to the sale of meat and poultry from USDA-approved state-inspected facilities should be removed.

Eliminate or Reform Marketing Orders and Checkoff Programs. Marketing orders and checkoff programs for agricultural commodities are similar in many ways. They both allow private actors within an industry to collaborate with the federal government to compel other competitors within an industry to fund the respective marketing order or checkoff program. There are currently 22 checkoff

programs,[104] and they focus on research and promotion of commodities such as beef and eggs. Marketing orders cover research and promotion, but also cover issues such as quality regulations and volume controls. The latter issue, volume controls, is a means to restrict supply, which drives up prices for consumers. Fortunately, there are few active volume controls.[105]

Marketing orders and checkoff programs are some of the most egregious programs run by the USDA. They are, in effect, a tax—a means to compel speech—and government-blessed cartels. Instead of getting private cooperation, they are tools for industry actors to work with government to force cooperation.

The next Administration should:

- **Reduce the number and scope of marketing orders and checkoff programs.** The USDA should reject any new requests for marketing orders and checkoff programs to the extent authorized by law and eliminate existing programs when possible. While the programs work differently, there are often petition processes and other ways that make it difficult for affected parties to get rid of the marketing orders and checkoff programs,[106] and the USDA itself may not even be required to honor requests to terminate a program.[107] The USDA should make the process easier. Further, the USDA should reject any effort to bring back volume controls to limit supplies of commodities.

- **Work with Congress to eliminate marketing orders and checkoff programs.** These programs should be eliminated, and if industry actors want to collaborate, they should do so through private means, not using the government to compel cooperation.

- **Promote legislation that would require regular votes.** There should be regular voting for parties subject to checkoff programs and marketing orders. For example, the voting should occur at least every five years, to determine whether a marketing order or checkoff program should continue. The USDA should be required to honor the results of such a vote. Through regular voting, parties can demonstrate their support for a marketing order or checkoff program and ensure that those administering them will be held accountable.

Focus on Trade Policy, Not Trade Promotion. The USDA's Foreign Agricultural Service (FAS) covers numerous issues, including "trade policy," which is a reference to removing trade barriers, among other things, to ensure an environment conducive to trade.[108] It also covers trade promotion.[109] This includes programs like the Market Access Program[110] that subsidizes trade associations,

businesses, and other private entities to market and promote their products overseas. FAS should play a proactive and leading role to help open upmarkets for American farmers and ranchers. There are numerous barriers, such as sanitary and phytosanitary measures, blocking American agricultural products from gaining access to foreign markets.[111] However, FAS should not help businesses and industries promote their exports, something these businesses and industries can and should do on their own.

The next Administration should:

- **Push legislation to repeal export promotion programs.** The USDA should work with Congress to repeal market development programs like the Market Access Program and similar programs.

Remove Obstacles for Agricultural Biotechnology. Innovation is critical to agricultural production and the ability to meet future food needs. The next Administration should embrace innovation and technology, not hinder its use—especially because of scare tactics that ignore sound science. One of the key innovations in agriculture is genetic engineering. According to the USDA, "[C]urrently, over 90 percent of U.S. corn, upland cotton, and soybeans are produced using GE [genetically engineered] varieties."[112]

Despite the importance of agricultural biotechnology, in 2016, Congress passed a federal mandate to label genetically engineered food.[113] This legislation was arguably just a means to try to provide a negative connotation to GE food. There are other challenges as well for agricultural biotechnology. For example, Mexico plans to ban the importation of U.S. genetically modified yellow corn.[114]

The next Administration should:

- **Counter scare tactics and remove obstacles.** The USDA should strongly counter scare tactics regarding agricultural biotechnology and adopt policies to remove unnecessary barriers to approvals and the adoption of biotechnology.

- **Repeal the federal labeling mandate.** The USDA should work with Congress to repeal the federal labeling law, while maintaining federal preemption, and stress that voluntary labeling is allowed.

- **Use all tools available to remove improper trade barriers against agricultural biotechnology.** The USDA should work closely with the Office of the United States Trade Representative to remove improper barriers imposed by other countries to block U.S. agricultural goods.

Reform Forest Service Wildfire Management. The United States Forest Service is one of four federal government land management agencies that administer 606 million acres, or 95 percent of the 640 million acres of surface land area managed by the federal government.[115] Located within the USDA, the Forest Service manages the National Forest System, which is comprised of 193 million acres.[116] As explained by the USDA, "The USDA Forest Service's mission is to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations."[117]

The Forest Service should focus on proactive management of the forests and grasslands that does not depend heavily on burning. There should be resilient forests and grasslands in the wake of management actions. Wildfires have become a primary vegetation management regime for national forests and grasslands.[118] Recognizing the need for vegetation management, the Forest Service has adopted "pyro-silviculture" using "unplanned" fire,[119] such as unplanned human-caused fires, to otherwise accomplish vegetation management.[120]

The Forest Service should instead be focusing on addressing the precipitous annual amassing of biomass in the national forests that drive the behavior of wildfires. By thinning trees, removing live fuels and deadwood, and taking other preventive steps, the Forest Service can help to minimize the consequences of wildfires.

Increasing timber sales could also play an important role in the effort to change the behavior of wildfire because there would be less biomass. Timber sales and timber harvested in public forests dropped precipitously in the early 1990s and still remain very low. For example, in 1988, the volume of timber sold and harvested by volume was about 11 billion and 12.6 billion board feet (BBF), respectively.[121] In 2021, timber sold was 2.8 BBF and timber harvested was 2.4 BBF.

In 2018, President Donald Trump issued Executive Order 13855 to, among other things, promote active management of forests and reduce wildfire risks.[122] The executive order stated, "Active management of vegetation is needed to treat these dangerous conditions on Federal lands but is often delayed due to challenges associated with regulatory analysis and current consultation requirements."[123] It further explained the need to reduce regulatory obstacles to fuel reduction in forests created by the National Environmental Policy Act and the Endangered Species Act.[124]

The next Administration should:

- **Champion executive action, consistent with law, and proactive legislation to reduce wildfires.** This would involve embracing Executive Order 13855, building upon it, and working with lawmakers to promote active management of vegetation, reduce regulatory obstacles to reducing fuel buildup, and increase timber sales.

Eliminate or Reform the Dietary Guidelines. The USDA, in collaboration with HHS, publishes the Dietary Guidelines every five years.[125] For more than 40 years, the federal government has been releasing Dietary Guidelines,[126] and during this time, there has been constant controversy due to questionable recommendations and claims regarding the politicization of the process.

In the 2015 Dietary Guidelines process, the influential Dietary Guidelines Advisory Committee veered off mission and attempted to persuade the USDA and HHS to adopt nutritional advice that focused not just on human health, but the health of the planet.[127] Issues such as climate change and sustainability infiltrated the process. Fortunately, the 2020 process did not get diverted in this manner. However, the Dietary Guidelines remain a potential tool to influence dietary choices to achieve objectives unrelated to the nutritional and dietary well-being of Americans.

There is no shortage of private sector dietary advice for the public, and nutrition and dietary choices are best left to individuals to address their personal needs. This includes working with their own health professionals. As it is, there is constantly changing advice provided by the government, with insufficient qualifications on the advice, oversimplification to the point of miscommunicating important points, questionable use of science, and potential political influence.

The Dietary Guidelines have a major impact because they not only can influence how private health providers offer nutritional advice, but they also inform federal programs. School meals are required to be consistent with the guidelines.[128]

The next Administration should:

- **Work with lawmakers to repeal the Dietary Guidelines.** The USDA should help lead an effort to repeal the Dietary Guidelines.

- **Minimally, the next Administration should reform the Dietary Guidelines.** The USDA, with HHS, should develop a more transparent process that properly considers the underlying science and does not overstate its findings. It should also ensure that the Dietary Guidelines focus on nutritional issues and do not veer off-mission by focusing on unrelated issues, such as the environment, that have nothing to do with nutritional advice. In fact, if environmental concerns supersede or water down recommendations for human nutritional advice, the public would be receiving misleading health information. The USDA, working with lawmakers, should codify these reforms into law.

ORGANIZATIONAL ISSUES

Based on the recommended reforms identified as ideal solutions, the USDA would look different in many respects. One of the biggest changes would be a USDA that is not focused on welfare, given that means-tested welfare programs would

be moved to HHS. The Food and Nutrition Service that administers the food and nutrition programs would be eliminated.

The Farm Service Agency, which administers many of the farm subsidy programs, would be significantly smaller in size if the ideal farm subsidy reforms were adopted.

Most important, a conservative USDA, as envisioned, would not be used as a governmental tool to transform the nation's food system, but instead would respect the importance of efficient agricultural production and ensure that the government does not hinder farmers and ranchers from producing an abundant supply of safe and affordable food.

For a conservative USDA to become a reality, and for it to stay on course with the mission as outlined, the White House must strongly support these reforms and install strong USDA leaders. These individuals almost certainly will be faced with opposition from some in the agricultural community who would fight changing subsidies in any fashion, although many of the reforms would likely be embraced by those in agriculture.

There would be strong opposition from environmental groups and others who want the federal government to transform American agriculture to meet their ideological objectives. Finally, there would be opposition from left-of-center groups who do not want to reform SNAP and would expand welfare and dependency—such as through universal free school meals—as opposed to reducing dependency.

Reducing the scope of government and promoting individual freedom may not always be easy, but it is something that conservatives regularly should strive for. The listed reforms to the U.S. Department of Agriculture would help to accomplish these objectives and are well worth fighting for to achieve a freer and more prosperous nation.

CONCLUSION

This chapter started with a discussion of the incredible success of American farmers and American agriculture in general. This is how the chapter should close as well. Americans are blessed with an agricultural sector, and a food system in general, which are worthy of incredible respect. A conservative USDA should appreciate this while recognizing that its role is to serve the interests of all Americans, not special interests. By being a champion of unleashing the potential of American agriculture, a conservative USDA would help to ensure a future with an abundant supply of safe and affordable food for individuals and families in the United States and across the globe.

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ENDNOTES

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11

DEPARTMENT OF EDUCATION

Lindsey M. Burke

MISSION

Federal education policy should be limited and, ultimately, the federal Department of Education should be eliminated. When power is exercised, it should empower students and families, not government. In our pluralistic society, families and students should be free to choose from a diverse set of school options and learning environments that best fit their needs. Our postsecondary institutions should also reflect such diversity, with room for not only "traditional" liberal arts colleges and research universities but also faith-based institutions, career schools, military academies, and lifelong learning programs.

Elementary and secondary education policy should follow the path outlined by Milton Friedman in 1955, wherein education is publicly funded but education decisions are made by families. Ultimately, every parent should have the option to direct his or her child's share of education funding through an education savings account (ESA), funded overwhelmingly by state and local taxpayers, which would empower parents to choose a set of education options that meet their child's unique needs.

States are eager to lead in K–12 education. For decades, they have acted independently of the federal government to pioneer a variety of constructive reforms and school choice programs. For example, in 2011, Arizona first piloted ESAs, which provide families roughly 90 percent of what the state would have spent on that child in public school to be used instead on education options such as private school tuition, online courses, and tutoring. In 2022, Arizona expanded the program to be available to all families.

The future of education freedom and reform in the states is bright and will shine brighter when regulations and red tape from Washington are eliminated. Federal money is inevitably accompanied by rules and regulations that keep the influx of funds from having much, if any, impact on student outcomes. It raises the cost of education without raising student achievement. To the extent that federal taxpayer dollars are used to fund education programs, those funds should be block-granted to states without strings, eliminating the need for many federal and state bureaucrats. Eventually, policymaking and funding should take place at the state and local level, closest to the affected families.

Although student loans and grants should ultimately be restored to the private sector (or, at the very least, the federal government should revisit its role as a guarantor, rather than direct lender) federal postsecondary education investments should bolster economic growth, and recipient institutions should nourish academic freedom and embrace intellectual diversity. That has not, however, been the track record of federal higher education policy or of the many institutions of higher education that are hostile to free expression, open academic inquiry, and American exceptionalism. Federal postsecondary policy should be more than massive, inefficient, and open-ended subsidies to "traditional" colleges and universities. It should be rebalanced to focus far more on bolstering the workforce skills of Americans who have no interest in pursuing a four-year academic degree. It should reflect a fuller picture of learning after high school, placing apprenticeship programs of all types and career and technical education on an even playing field with degrees from colleges and universities. Rather than continuing to buttress a higher education establishment captured by woke "diversicrats" and a *de facto* monopoly enforced by the federal accreditation cartel, federal postsecondary education policy should prepare students for jobs in the dynamic economy, nurture institutional diversity, and expose schools to greater market forces.[1]

OVERVIEW

For most of our history, the federal government played a minor role in education. Then, over a 14-month period beginning in 1964, Congress planted the seeds for what would become the U.S. Department of Education (ED or the department). In July of that year, President Lyndon B. Johnson signed into law the Civil Rights Act of 1964, after Congress reached a consensus that the mistreatment of black Americans was no longer tolerable and merited a federal response. In the case of the Elementary and Secondary Education Act of 1965 (ESEA)[2] and the Higher Education Act of 1965 (HEA),[3] Congress sought to improve educational outcomes for disadvantaged students by providing additional compensatory funding for low-income children and lower-income college students.

Spending on ESEA and the HEA—part of Johnson's "War on Poverty"—grew exponentially in the years that followed. By Fiscal Year 2022, ESEA programs received $27.7 billion in appropriations, in addition to $190 billion that came

through the pandemic's Elementary and Secondary Schools Emergency Relief (ESSER) Funds,[4] which relied on ESEA formulas. The same year, the department spent more than $2 billion just to administer Title IV of the HEA, which authorizes federal student loans and Pell grants. It provided $22.5 billion in Pell grants, and it oversaw outlays of close to $100 billion in direct student loans.

Since 1965, Congress has continued to layer on dozens of new laws and programs as federal "solutions" to myriad education problems. In 1973, it passed the Rehabilitation Act,[5] and, in 1975, the Individuals with Disabilities Education Act (IDEA)[6] to address educational neglect of students with disabilities. In 2002, it created the Institute for Education Sciences to consolidate education data collection and fund research. Congress has also enacted a series of Carl D. Perkins Career and Technical Education Acts, including Perkins V in 2018.[7]

Congress could have, and once did, distribute management of federal education programs outside of a single department. But for those interested in expanding federal funding and influence in education, this unconsolidated approach was less than ideal, because a single, captive agency would allow them to promote their agenda more effectively across Administrations. Eventually, the National Education Association made a deal and backed the right presidential candidate— Jimmy Carter—who successfully lobbied for and delivered the Cabinet-level agency.

When it was established in 1979—becoming operational in 1980—the agency was supposed to act as a "corralling" mechanism. Carter signed the Department of Education Organization Act[8] into law in 1979, believing in part that it would reduce administrative costs and improve efficiency by housing most of the federal education programs that had proliferated in the wake of Johnson's War on Poverty under one roof.

It has had the opposite effect. Instead, special interest groups like the National Education Association (NEA), American Federation of Teachers (AFT), and the higher education lobby have leveraged the agency to continuously expand federal expenditures—a desirable funding stream from their vantage point because federal budgets are not constrained like state and local budgets that must be balanced each year. By FY 2022, the department's discretionary and mandatory appropriation topped $80 billion, not including student loan outlays. Each of its programs has attendant federal strings and red tape.

One recent example is the Biden Administration's requirement that state education agencies and school districts submit "equity" plans as a condition of receiving COVID recovery ESSER funds in the American Rescue Plan (ARP).[9] This exercise led to the hiring of numerous new government employees as the rules were promulgated, plans were created after collecting public feedback, and those plans were eventually deemed satisfactory.

The next Administration will need a plan to redistribute the various congressionally approved federal education programs across the government, eliminate

those that are ineffective or duplicative, and then eliminate the unproductive red tape and rules by entrusting states and districts with flexible, formula-driven block grants. This chapter details that plan.

As the next Administration executes its work, it should be guided by a few core principles, including:

- **Advancing education freedom.** Empowering families to choose among a diverse set of education options is key to reform and improved outcomes, and it can be achieved without establishing a new federal program. For example, portability of existing federal education spending to fund families directly or allowing federal tax credits to encourage voluntary contributions to K–12 education savings accounts managed by charitable nonprofits, could significantly advance education choice.

- **Providing education choice for "federal" children.** Congress has a special responsibility to children who are connected to military families, who live in the District of Columbia, or who are members of sovereign tribes. Responsibility for serving these students should be housed in agencies that are already serving these families.

- **Restoring state and local control over education funding.** As Washington begins to downsize its intervention in education, existing funding should be sent to states as grants over which they have full control, enabling states to put federal funding toward any lawful education purpose under state law.

- **Treating taxpayers like investors in federal student aid.** Taxpayers should expect their investments in higher education to generate economic productivity. When the federal government lends money to individuals for a postsecondary education, taxpayers should expect those borrowers to repay.

- **Protecting the federal student loan portfolio from predatory politicians.** The new Administration must end the practice of acting like the federal student loan portfolio is a campaign fund to curry political support and votes. The new Administration must end abuses in the loan forgiveness programs. Borrowers should be expected to repay their loans.

- **Safeguarding civil rights.** Enforcement of civil rights should be based on a proper understanding of those laws, rejecting gender ideology and critical race theory.

- **Stopping executive overreach.** Congress should set policy—not Presidents through pen-and-phone executive orders, and not agencies through regulations and guidance. National emergency declarations should expire absent express congressional authorization within 60 days after the date of the declaration.

Bolstered by an ever-growing cabal of special interests that thrive off federal largesse, the infrastructure that supports America's costly federal intervention in education from early childhood through graduate school has entrenched itself. But, unlike the public sector bureaucracies, public employee unions, and the higher education lobby, families and students do not need a Department of Education to learn, grow, and improve their lives. It is critical that the next Administration tackle this entrenched infrastructure.

NEEDED REFORMS

Federal intervention in education has failed to promote student achievement. After trillions spent since 1965 on the collective programs now housed within the walls of the department, student academic outcomes remain stagnant. On the main National Assessment of Educational Progress (NAEP), reading outcomes on the 2022 administration have remained unchanged over the past 30 years. *Declines* in math performance are even more concerning than students' lack of progress on reading outcomes. Fourth- and eighth-grade math scores saw the largest decline since the assessments were first administered in 1990. Average fourth-grade math scores declined five points, and average eighth-grade math scores declined eight points. Just one-third of eighth graders nationally are proficient in reading and math. Just 27 percent of eighth graders were proficient in math in 2022, and just 31 percent of eighth graders scored proficient in reading in 2022.

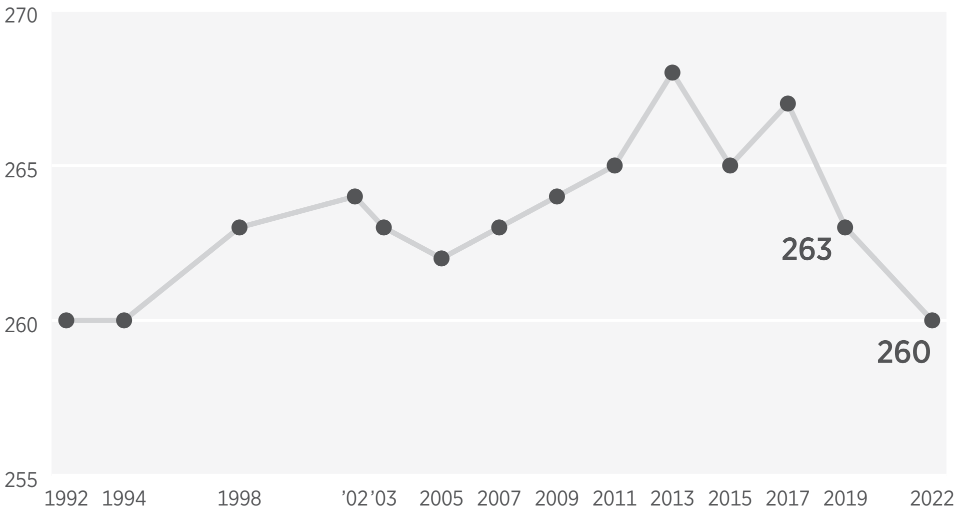
The NAEP Long-term Trend Assessment shows academic stagnation since the 1970s, with particular stagnation in the reading scores of 13-year-old students since 1971, when the assessment was first administered. Math scores, though modestly improved, are still lackluster.

Additionally, the department has created a "shadow" department of education operating in states across the country. Federal mandates, programs, and proclamations have spurred a hiring spree among state education agencies, with more than 48,000 employees currently on staff in state agencies across the country. Those employees are more than 10 times the number of employees (4,400)[10] at the federal Department of Education, and their jobs largely entail reporting back to Washington. Research conducted by The Heritage Foundation's Jonathan Butcher finds that the federal government funds 41 percent of the salary costs of state education agencies.[11]

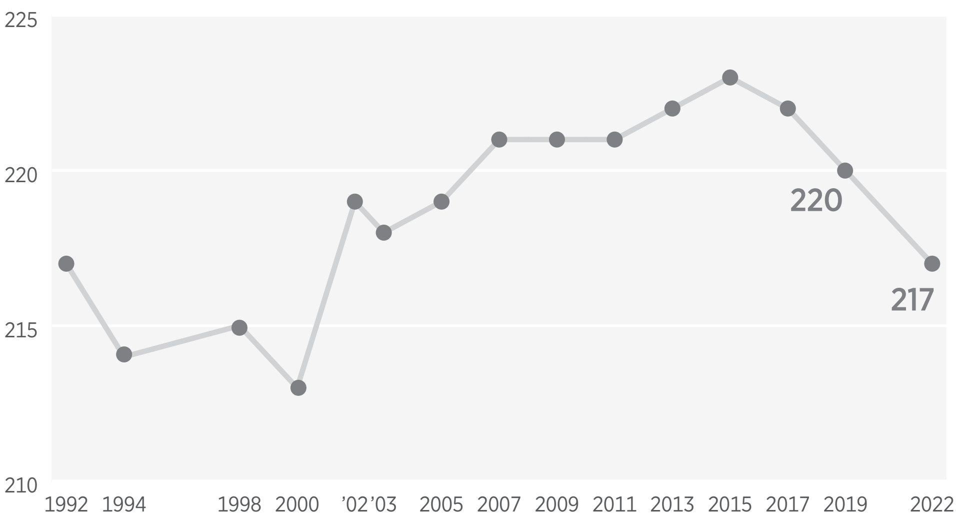
CHART 1

Trends in Fourth- and Eighth-Grade Reading

EIGHTH-GRADE READING, AVERAGE SCORES



FOURTH-GRADE READING, AVERAGE SCORES



SOURCES: The Nation's Report Card, "National Average Scores," Grade 4, https://www.nationsreportcard.gov/reading/nation/scores/?grade=4 (accessed March 17, 2023), and The Nation's Report Card, "National Average Scores," Grade 8, https://www.nationsreportcard.gov/reading/nation/scores/?grade=4 (accessed March 17, 2023).

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This bloat has persisted for decades. In 1998, a commission led by Representative Pete Hoekstra released a critical report based on extensive fieldwork, interviews, and analysis of the Department of Education. The report, *Education at a Crossroads: What Works and What's Wasted in Education Today*, detailed the suffocating bureaucratic red tape Carter's agency had wrapped around states.[12] The commission estimated that states completed nearly 50 million hours of paperwork just to get their federal education spending, which at that time, they estimated, resulted in just 65 cents to 70 cents of each federal taxpayer dollar making its way to the classroom. The situation has only worsened since the Hoekstra report. More recent evidence of Washington's bureaucratic paperwork burden can be found in the growing number of *non-teaching* staff in public schools across the country, which doubled relative to growth in student enrollment from 1992 to 2015.

The labyrinthian nature of federal education programs—convoluted funding formulas, competitive grant applications, reporting requirements, etc.—has likely contributed to the considerable bureaucratic bloat in state and local school districts across the country and is one of the key areas of needed reform. Streamlining existing programs and funding so that dollars are sent to states through straightforward per-pupil allocations or in the form of grants that states can put toward any lawful education purpose under state law would bring a needed easing of the federal compliance burden. The federal government should confine its involvement in education policy to that of a statistics-gathering agency that disseminates information to the states.

To improve educational opportunities for all Americans, the next Administration should work with Congress to pass a Department of Education Reorganization Act to reform, eliminate, or move the department's programs and offices to appropriate agencies. The following is an overview of what should happen within each of the offices and to each of the programs currently operated by the department.

PROGRAM AND OFFICE PRIORITIZATION WITHIN THE DEPARTMENT

Office of Elementary and Secondary Education (OESE)

The OESE is comprised of 36 programs, ranging from Title I, Part A, of the Elementary and Secondary Education Act and Impact Aid, to programs for Native American students and the D.C. Opportunity Scholarship Program.

- **Reduce the number of programs managed by OESE, and transfer some remaining programs to other federal agencies.**

- **Transfer Title I, Part A, which provides federal funding for lower-income school districts, to the Department of Health and Human Services, specifically the Administration for Children and Families. It should be administered as a no-strings-attached formula block grant.**

- **Restore revenue responsibility for Title I funding to the states over a 10-year period.**

OESE also currently manages the federal Impact Aid program, which provides funding to school districts to compensate for reductions in property tax revenue due to the presence of federal property (such as that associated with a military base or tribal lands).

- **Eliminate Impact Aid not tied to students.**

- **Move student-driven Impact Aid programs to the Department of Defense Education Authority (DoDEA) or the Department of Interior's Bureau of Indian Education.**

- **Transfer all Indian education programs to the Bureau of Indian Education.**

- **The D.C. Opportunity Scholarship Program, which provides vouchers to low-income children living in the nation's capital—appropriate as D.C. is under the jurisdiction of Congress—should be expanded into a universal program, formula-funded, and moved to the Department of Health and Human Services.**

- **All other programs at OESE should be block-granted or eliminated.**

Office of Career, Technical, and Adult Education

- **Transfer the Office of Career, Technical, and Adult Education's few programs to the Department of Labor, but**

- **Move the Tribally Controlled Postsecondary Career and Technical Education Program to the Bureau of Indian Education.**

Office of Special Education and Rehabilitative Services (OSERS)

The Office of Special Education and Rehabilitative Services (OSERS) houses nearly two dozen programs, ranging from funding for the Individuals with Disabilities Education Act (IDEA) and the National Technical Institute for the Deaf to Special Olympics Funding and the American Printing House for the Blind.

- **Most IDEA funding should be converted into a no-strings formula block grant targeted at students with disabilities and distributed directly to local education agencies by Health and Human Service's Administration for Community Living.**

- **Transfer the Vocational Rehabilitation Grants for Native American students to the Bureau of Indian Education.**

- **Phase out earmarks for a variety of special institutions, as originally envisioned.**

- **To the extent that OSERS supports federal efforts to enforce our laws against discrimination of individuals with disabilities, those assets should be moved to the Department of Justice (DOJ) along with the Office for Civil Rights (OCR).**

Office for Postsecondary Education (OPE)

- **The next Administration should work with Congress to eliminate or move OPE programs to ETA at the Department of Labor.**

- **Funding to institutions should be block-granted and narrowed to Historically Black Colleges and Universities (HBCUs) and tribally controlled colleges.**

- **Move programs deemed important to our national security interests to the Department of State.**

Institute of Education Sciences (IES)

- **Move ED's statistical office, the National Commission for Education Statistics (NCES), to the Department of Commerce's Census Bureau.** If Congress believes the federal government can play a valuable research role, those research centers can be moved to the National Science Foundation. If Congress decides to maintain IES as an independent agency, it needs to address major governance and management issues that keep it from being a productive contributor to the knowledge base related to teaching and learning.

Office of Federal Student Aid (FSA)

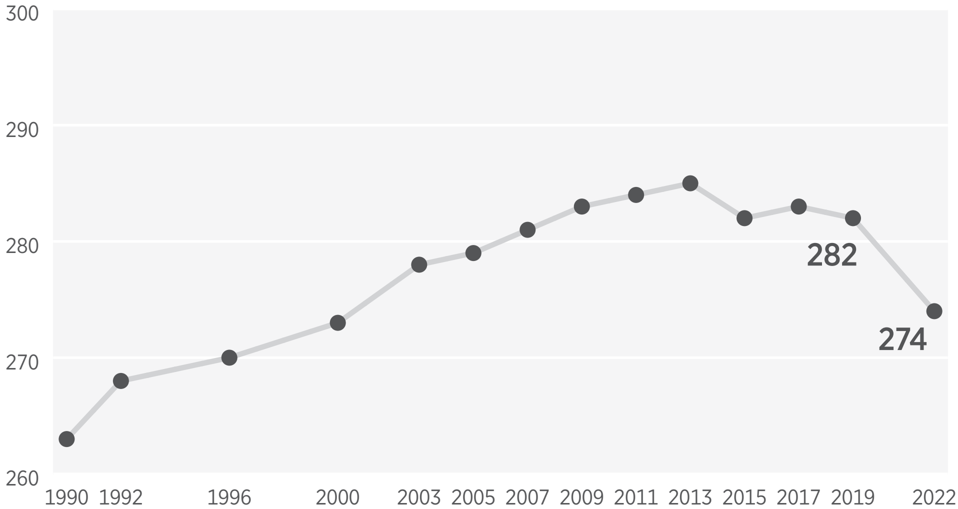
- **The next Administration should completely reverse the student loan federalization of 2010 and work with Congress to spin off FSA and its student loan obligations to a new government corporation with professional governance and management.**

With a statutory charge that it preserve the federal student loan portfolio for the benefit of the taxpayers and students, this new entity would be (1) professionally governed by an agency head and board of trustees appointed by the President

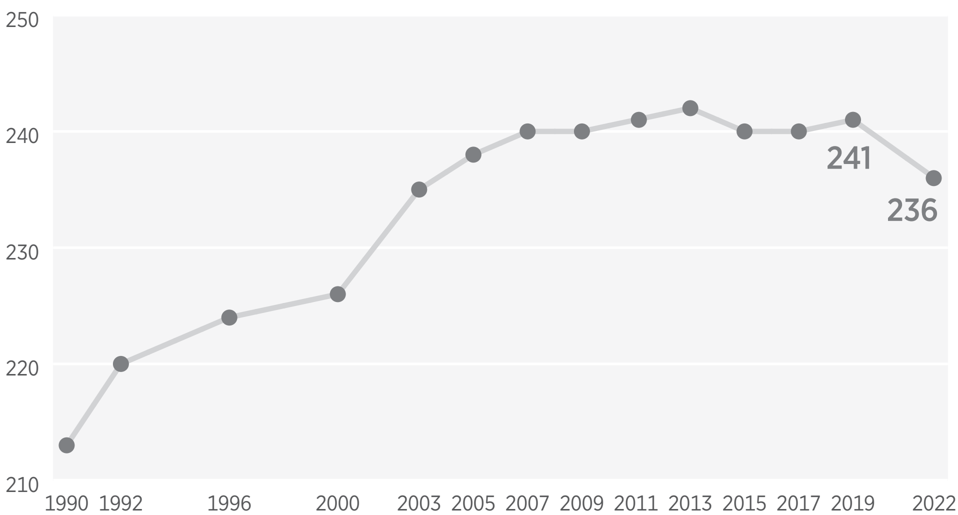
CHART 2

Trends in Fourth- and Eighth-Grade Mathematics

EIGHTH-GRADE MATH, AVERAGE SCORES



FOURTH-GRADE MATH, AVERAGE SCORES



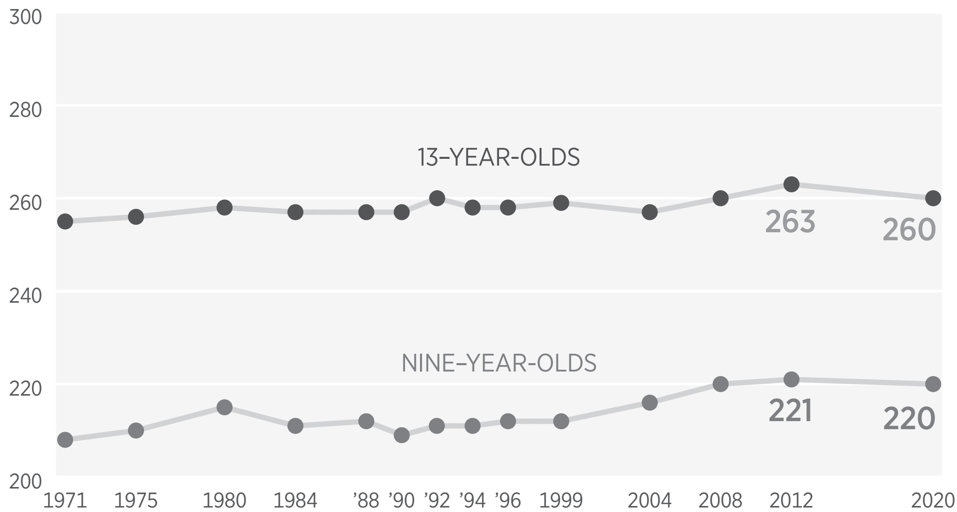
SOURCES: The Nation's Report Card, "National Average Scores," Grade 4, https://www.nationsreportcard.gov/mathematics/nation/scores/?grade=4 (accessed March 17, 2023), and The Nation's Report Card, "National Average Scores," Grade 8, https://www.nationsreportcard.gov/mathematics/nation/scores/?grade=4 (accessed March 17, 2023).

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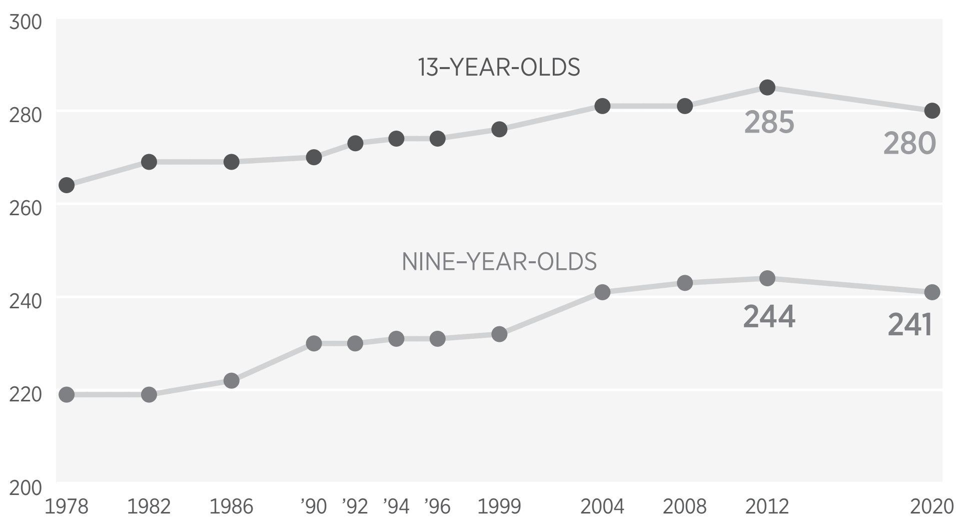
CHART 3

Long-Term Trends for Nine– and 13–Year-Olds

READING, AVERAGE SCORES



MATH, AVERAGE SCORES



SOURCE: The Nation’s Report Card, “NAEP Data Explorer,” https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=WCSSTUS1&f=W (accessed March 17, 2023).

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with the advice and consent of the Senate; (2) funded with annual appropriations from Congress; and (3) operated by professional managers. Federal loans would be assigned directly to the Treasury Department, which would manage collections and defaults. The new federal student loan authority would manage the loan portfolio, handle borrower relations, administer loan applications and disbursements, monitor institutional participation and accountability issues, and issue regulations.

Office for Civil Rights (OCR)

- **OCR should move to the Department of Justice.** The federal government has an essential responsibility to enforce civil rights protections, but Washington should do so through the Department of Justice and federal courts. The OCR at DOJ should be able to enforce only through litigation.

Additional Bureaus and Offices

For those attorneys, accountants, experts, and specialists in the department's remaining offices subject to closure whose positions might nevertheless be a key component of serving the mission—positions that might include the Office of the Secretary/Deputy Secretary, Office of the Undersecretary, Office of the General Counsel, Office of the Inspector General, Office of Finance and Operations, Office of the Chief Information Officer, Office of Communications and Outreach, and Office of Legislative and Congressional Affairs—the opportunity to join other agencies based on their expertise and the needs of other agencies should be made available. For example, OGC higher education lawyers would join the newly independent Federal Student Aid Office or the Department of Labor, and OGC civil rights attorneys would join DOJ. These positions must first be determined to serve a continued mission need prior to being transferred.

- **Attorneys, accountants, experts, and specialists in the department's remaining offices subject to closure, and whose positions are indispensable to serving the mission, should have the opportunity to join other agencies.**

Current Laws Relating to the Department of Education That Require Repeal

In order to fully wind down the Department of Education, Congress must pass and the President must sign into law a Department of Education Reorganization Act (or Liquidating Authority Act) to direct the executive branch on how to devolve the agency as a stand-alone Cabinet-level department.

- **Congress should pass and the next President should sign a Department of Education Reorganization Act.**

Current Regulations Promulgated by or Relevant to the Agency That Should Be Rolled Back or Eliminated

While the next Administration works to distribute department programs across the federal government, it will need to thoroughly review the many education-related regulations promulgated by the Biden Administration. There are five primary regulatory targets (as of December 2022) that require the next Administration's attention: regulations on (1) Charter School Grant Program Priorities; (2) Civil Rights Data Collection; (3) Student Assistance General Provisions, Federal Perkins Loan Program, and William D. Ford Federal Direct Loan Program Final Regulations; (4) Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (Title IX); and (5) Assistance to States for the Education of Children with Disabilities, Preschool Grants for Children with Disabilities (Equity in IDEA). The next Administration should also review regulatory changes to the school meals program (under the Department of Agriculture) and changes to the Income-Driven student loan program. Additional Biden Administration regulations on (1) gainful employment, administrative capability, and financial responsibility for institutions that participate in the federal student loans and grant programs; (2) Title VI, (3) accreditation of postsecondary institutions, and (4) female athletics are expected in to be released in 2023.

- **Thoroughly review the many education-related regulations promulgated by the Biden Administration, as well as the school meals program and the Income-Driven student loan program.**

Charter School Grant Programs

Congress first authorized the Charter School Program (CSP) in 1994 [Title X, Part C of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, 20 U.S.C. § 8061 et seq. (1994)]. It most recently reauthorized the program in 2015 as part of the Every Student Succeeds Act.[13] On March 14, 2022, the department published a notice concerning proposed priorities, requirements, definitions, and grant selection criteria relating to the award of federal grants to applicants in CSP. This proposal increases the federal footprint in the charter school sector by ignoring statute and adding to the list of requirements imposed on charter schools.

- **The new Administration must take immediate steps to rescind the new requirements and lessen the federal restrictions on charter schools.**

Civil Rights Data Collection

On December 13, 2021, OCR published a notice concerning proposed revisions to OCR's Mandatory Civil Rights Data Collection (CRDC) in which it proposed

to create and collect data on a new “nonbinary” sex category (in addition to the current “male” or “female” sex categories) and to retire data collection that indicates the number of (1) high school–level interscholastic athletics sports in which only male and female students participate, (2) high school–level athletics teams in which only male or female students participate, and (3) participants on high school–level interscholastic athletics sports teams in which only male or only female students participate. These poorly conceived changes are contrary to law, fail to take account of student privacy interests and statutory protections favoring parental rights under the Protection of Pupils Rights Amendment, and jettison longstanding data collections that assist in the enforcement of Title IX.

- **The new Administration must quickly move to rescind these changes, which add a new “nonbinary” sex category to OCR’S data collection and issue a new CRDC that will collect data directly relevant to OCR’s statutory enforcement authority.**

Student Assistance General Provisions, Federal Perkins Loan Program, and William D. Ford Federal Direct Loan Program Final Regulations

Effective July 1, 2023, the department promulgated final regulations addressing loan forgiveness under the HEA’s provisions for borrower defense to repayment (“BDR”), closed school loan discharge (“CSLD”), and public service loan forgiveness (“PSLF”). The regulations also included prohibitions against pre-dispute arbitration agreements and class action waivers for students enrolling in institutions participating in Title IV student loan programs. Acting outside of statutory authority, the current Administration has drastically expanded BDR, CSLD, and PSLF loan forgiveness without clear congressional authorization at a tremendous cost to the taxpayers, with estimates ranging from $85.1 to $120 billion.

- **The new Administration must quickly commence negotiated rulemaking and propose that the department rescind these regulations.**

- **The next Administration should also rescind Dear Colleague Letter (DCL) GEN 22-11 and DCL GEN 22-10 and its letters to accreditation agencies dated July 19, 2022, which are attempts to undercut Florida’s SB 7044, providing universities more flexibility on accreditation.**

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (Title IX)

With its Notice of Proposed Rulemaking published on July 12, 2022, the Biden Education Department seeks to gut the hard-earned rights of women with its changes to the department’s regulations implementing Title IX, which prohibits

discrimination on the basis of sex in educational programs and activities. Instead, the Biden Administration has sought to trample women's and girls' athletic opportunities and due process on campus, threaten free speech and religious liberty, and erode parental rights in elementary and secondary education regarding sensitive issues of sex. The new Administration should take the following steps:

- **Work with Congress to use the earliest available legislative vehicle to prohibit the department from using any appropriations or from otherwise enforcing any final regulations under Title IX promulgated by the department during the prior Administration.**

- **Commence a new agency rulemaking process to rescind the current Administration's Title IX regulations; restore the Title IX regulations promulgated by then-Secretary Betsy DeVos on May 19, 2020; and define "sex" under Title IX to mean only biological sex recognized at birth.**

- **Work with Congress to amend Title IX to include due process requirements; define "sex" under Title IX to mean only biological sex recognized at birth; and strengthen protections for faith-based educational institutions, programs, and activities.**

The Trump Administration's 2020 Title IX regulation protected the foundational right to due process for those who are accused of sexual misconduct. The Biden Administration's proposed change to the interpretation of Title IX disposes of these rights.

- **The next Administration should move quickly to restore the rights of women and girls and restore due process protections for accused individuals.**

At the same time, there is no scientific or legal basis for redefining "sex" to "sexual orientation and gender identity" in Title IX. Such a change misrepresents the U.S. Supreme Court's opinion in *Bostock*, threatens the American system of federalism, removes important due process protections for students in higher education, and puts girls and women in danger of physical harm. Facilitating social gender transition without parental consent increases the likelihood that children will seek hormone treatments, such as puberty blockers, which are experimental medical interventions. Research has not demonstrated positive effects and long-term outcomes of these treatments, and the unintended side effects are still not fully understood.

- **The next Administration should abandon this change redefining "sex" to mean "sexual orientation and gender identity" in Title IX immediately across all departments.**

- **On its first day in office, the next Administration should signal its intent to enter the rulemaking process to restore the Trump Administration's Title IX regulation, with the additional insistence that "sex" is properly understood as a fixed biological fact. Official notice-and-comment should be posted immediately.**

- **At the same time, the political appointees in the Office for Civil Rights should begin a full review of all Title IX investigations that were conducted on the understanding that "sex" referred to gender identity and/or sexual orientation.**

- **All ongoing investigations should be dropped, and all school districts affected should be given notice that they are free to drop any policy changes pursued under pressure from the Biden Administration.**

- **The OCR Assistant Secretary should prepare a report of OCR's actions for the new Secretary of Education, who should—by speech or letter—publicize the nature of the overreach engaged in by his predecessor.**

- **The Secretary should make it clear that FERPA allows parents full access to their children's educational records, so any practice of paperwork obfuscation on this front violates federal law.**

Title VI—School Discipline and Disparate Impact

Assuring a safe and orderly school environment should be a primary consideration for school leaders and district administrators. Unfortunately, federal overreach has pushed many school leaders to prioritize the pursuit of racial parity in school discipline indicators—such as detentions, suspensions, and expulsions—over student safety. In 2014, the Obama Administration issued a Dear Colleague Letter that muddied the standard for civil rights enforcement under Title VI for student discipline cases. Before the DCL, a school would be in violation of federal law for treating black and white students differently for the same offense (disparate treatment); under the Obama Administration schools were at risk of losing federal funding if they treated black and white students equally but had aggregate differences in the rates of school discipline by race (disparate impact).

OCR leveraged federal civil rights investigations as policy enforcement tools; these investigations could only end when school districts agreed to adopt lenient

discipline policies, commonly known as "restorative justice." Academic studies, as well as student and teacher surveys, suggest that academics and school climate have been harmed substantially by this push.

The Trump Administration rescinded the Obama Administration's guidance on school discipline and corrected the Obama Administration's overreach in Title VI enforcement.

- **The next Administration should continue the policy of the Trump Administration in this area and direct the department to conduct a comprehensive review of all Title VI cases to ascertain to what extent these cases include allegations of disparate impact.**

- **OCR should also review all resolution agreements with school districts to conform with this policy.**

- **As part of this effort, the new Administration should also direct the department and DOJ jointly to issue enforcement guidance stating that the agencies will no longer investigate Title VI cases that exclusively rest on allegations of disparate impact.**

- **To the extent that the Biden Administration publishes guidance or promulgates a regulation on this topic, the next Administration should rescind the guidance and commence rulemaking to rescind the regulation.**

Getting the federal government out of the business of dictating school discipline policy is a good start. But if the next conservative Department of Education simply rescinds the Biden-era regulation, it could very easily be enforced again on Day One through a Dear Colleague Letter by another leftist Administration.

- **In addition to rescinding the policy and any related guidance, the next Secretary should work with the next Attorney General on a regulation that would clarify current regulations to state that Title VI of the Civil Rights Act does not include a disparate impact standard.**

As law professor Gail Heriot has noted, the alleged existence of a disparate impact standard under Title VI makes everything presumed illegal unless given special dispensation by the federal government.

- **Although it would require political capital from the White House, given that mainstream news outlets are sure to frame it as an attack**

on civil rights, the next conservative Administration should take sweeping action to assure that the purpose of the Civil Rights Act is not inverted through a disparate impact standard to provide a pretext for theoretically endless federal meddling.

Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities (Equity in IDEA)

- **Effective January 18, 2017, the department issued final regulations under Part B of IDEA that require states to consider race and ethnicity in the identification, placement, and discipline of students with disabilities. The new Administration should rescind this regulation.**

Students should never be denied access to special education services because of their race or ethnicity, but this is happening in school districts across the country thanks to the Obama Administration's Equity in IDEA regulation. This was not the intent of the regulation, but it is an inevitable byproduct of its flawed assumptions. The Obama Administration looked at the racial statistics on special education assignment and made two assumptions: that African American students were disproportionately overrepresented, and that this overrepresentation constituted a harm that required federal pressure to ameliorate.

School districts deemed to overrepresent minority students in special education assignment, or in discipline amongst special education students, are tagged by their state education agencies as engaging in "significant disproportionality," and are required to reallocate 15 percent of their IDEA Part B money into coordinated early intervening services that are intended to address the "root causes of disproportionality." In practice, this can mean raiding special education funding to pay for CRT-inspired "equity" consultants and professional development.

This is especially problematic given that both of the assumptions behind Equity in IDEA are flawed. Special education services provide extra assistance to students; they do not harm them. And according to the most rigorous research on the subject, conducted by Penn State's Paul Morgan, black students are actually underrepresented in special education once adequate statistical controls are made. That means that this regulation effectively further depresses the provision of valuable services to an already underserved group.

- **The next Administration should immediately commence rulemaking to rescind the Equity in IDEA regulation.** No replacement regulation is required.

- **The Office of Special Education and Rehabilitative Services (OSERS) should prepare a digest of the best research on this subject and share**

it directly with state superintendents and state special education leaders across the country, who have been led by this regulation to believe a false problem diagnosis. Every effort should be made to dissuade states from continuing to operate on the assumption that overrepresentation requires state intervention after the federal pressure is rescinded.

Provide School Meals to Children in Need; Do Not Use Federal Meals to Support Radical Ideology

In May 2022, the U.S. Department of Agriculture (USDA) tried to advance a radical political agenda using the federal school meal program. Nearly a century ago, federal lawmakers adopted the National School Lunch Program (NSLP) and School Breakfast Program (SBP) and other services that provide meals for K–12 students to give children from low-income families access to food while at school.

Since the 1940s, federal lawmakers have greatly expanded these meal programs, creating an entitlement for nearly all students, regardless of family income levels, and have turned the meal programs into some of the most wasteful federal programs in Washington. Now, the USDA is threatening to withhold federal taxpayer spending for these meals from schools that do not implement Title IX of the Education Amendments of 1972 so that the term "sex" is replaced with "sexual orientation and gender identity" (SOGI).

- **The next Administration should prohibit the USDA or any other federal agency from withholding services from federal or state agencies—including but not limited to K–12 schools—that choose not to replace "sex" with "SOGI" in that agency's administration of Title IX.**

The Administration will have significant support for this policy change among state officials and Members of Congress. Twenty-two state attorneys general filed a lawsuit after the USDA's announcement that the agency intended to withhold spending from schools that do not replace sex with SOGI. Members of Congress also introduced legislation in 2022 that would prohibit the agency from carrying out its intentions regarding Title IX.

Phase Out Existing Income-Driven Repayment Plans

While income-driven repayment (IDR) of student loans is a superior approach relative to fixed payment plans, the number of IDR plans has proliferated beyond reason. And recent IDR plans are so generous that they require no or only token repayment from many students.

- **The Secretary should phase out all existing IDR plans by making new loans (including consolidation loans) ineligible and should implement**

a new IDR plan. The new plan should have an income exemption equal to the poverty line and require payments of 10 percent of income above the exemption. If new legislation is possible, there should be no loan forgiveness, but if not, existing law would require forgiving any remaining balance after 25 years.

President Biden has proposed a new income-driven repayment program that would be extremely generous to borrowers, requiring only nominal payments from most students. It would turn every policy lever to the most generous setting on record (e.g., lowering the percentage of income owed from 10 percent to 25 percent under existing plans to 5 percent, lowering the number of years of payment required from 20 or 25 years to 10 years, and increasing income exemption from 150 percent to 225 percent of the poverty line). The median borrower who earns an associate degree would owe only $15 a month, regardless of how much he or she had borrowed. The median bachelor's degree borrower would owe only $68 a month. This plan essentially converts these student loans into delayed grant programs.

OTHER STRUCTURAL REFORMS THAT THE DEPARTMENT OF EDUCATION REQUIRES

Reform Federal Education Data Collection

The National Assessment of Educational Progress (NAEP) and other data collections currently release data by race, ethnicity, socioeconomic status, English language proficiency, disability, and sex. However, one of the most important—if not the most important—factor influencing student educational achievement and attainment is family structure. As education scholar Ian Rowe has noted, NAEP already collects data on students' family structure; it just does not make those data publicly available.

- **The Department of Education (or whichever agency collects such data long term) should make student data available by family structure to the public, including as part of its Data Explorer tool.**
- **As discussed above, data collection efforts should be consolidated under the Census Bureau.**
- **Data collection efforts in higher education should also be improved by housing higher education data at the Department of Labor.** This would provide more transparency in evaluating postsecondary education and workforce training program outcomes; contextualize those results based on trends observed more generally; enable the adjusting of real

wages to account for regional differences in earnings and cost of living; and develop a reliable methodology for risk adjusting institutional and program outcomes to more accurately reflect the value added of education programs (as opposed to their admissions selectivity).

Currently the Department of Education relies on graduation rates and average earnings as proxies for educational quality. Both of those outcomes, however, are highly dependent upon a student's socioeconomic background, sex, family status, and other factors. Colleges and universities with selective admissions policies post the strongest outcomes, primarily because they admit mostly low-risk, traditional students. Open enrollment institutions post the weakest outcomes, largely because life is challenging and complicated for low-income and non-traditional students, who may be forced to drop out when a work schedule changes, a child needs more attention, or an unexpected repair or medical bill makes continuing impossible. Such confounding factors make it difficult to isolate the impact of educational quality versus socioeconomic factors on student outcomes. The Department of Health and Human Services faced similar challenges in trying to evaluate healthcare outcomes since social determinants of health result in worse health outcomes among those who are socioeconomically disadvantaged, have low educational attainment levels, have struggled with addiction, or have poor diet and exercise habits. Without risk adjustment of outcomes, hospitals treating wealthy patients will always appear to be delivering good care, and hospitals treating low-income patients will appear to be delivering poor care. Higher education outcomes data should be similarly "risk adjusted" to more carefully isolate the impact of educational quality versus socioeconomic status and other factors on college outcomes.

Reform the Negotiated Rulemaking Process at ED

The U.S. Department of Education is required by statute[14] to engage in negotiated rulemaking prior to promulgating new regulations under Subchapter 1 of the Elementary and Secondary Education Act as well as Subchapters II (Teacher Quality Enhancements) and IV of the Higher Education Act of 1964 (Student Assistance). The purpose of negotiated rulemaking is to engage a committee of stakeholders early in the drafting of proposed regulations to ensure that the regulation can be implemented as written, to understand any potential unintended consequences, and to seek suggestions from stakeholders on alternative solutions. The goal is for the negotiators to reach a consensus, thus smoothing the way to promulgate a new rule.

Although it is helpful for the department to receive stakeholder input, the negotiated rulemaking process has become an expensive and time-consuming undertaking. Consensus is only rarely reached, enabling the department to pursue its own path. The department's master calendar (which requires final rules to be

published by October 1 if they are to be implemented by July 1st of the subsequent year) compounds the problem, making it unduly challenging to update regulations as needed to keep pace with changes in education, finance, accounting, pedagogy, and student assessment.

In recent decades, negotiated rulemaking has become a veritable three-ring circus, replete with negotiators who use their Twitter accounts and other social media feeds during negotiations to denigrate the process and their peer negotiators in real time. A few Members of Congress use the public comment process to deliver political speeches, apparently to raise their own profiles but without adding any new information to the process. Some advocacy groups have latched onto the process for fundraising purposes, sometimes misrepresenting negotiation language to agitate followers and supporters and encourage them to make financial contributions. At times, the department itself has appeared to sabotage consensus, which enables them to write the regulation as they wish and without regard to the concerns raised by negotiators.

- **The Department of Education should work with Congress to amend the HEA to eliminate the negotiated rulemaking requirement. At a minimum, Congress should allow the department to use public hearings rather than negotiated rulemaking sessions.**

Reform the Office of Federal Student Aid

This proposal urges the new Administration to end the abuse of FSA's loan forgiveness programs, to manage the federal student loan portfolio in a professional way, and to work with Congress for a long-term overhaul of the program for the benefit of students and taxpayers.

- **The new Administration must end the prior Administration's abuse of the agency's payment pause and HEA loan forgiveness programs, including borrower defense to repayment, closed school discharge, and Public Service Loan Forgiveness.**

- **The new Administration should also take immediate steps to commence the rulemaking process to rescind or substantially modify the prior Administration's HEA regulations.**

- **The federal government does not have the proper incentives to make sound lending decisions, so the new Administration should consider returning to a system in which private lenders, backed by government guarantees, would compete to offer student loans, including subsidized and unsubsidized, loans.** This would allow for

market prices and signals to influence educational borrowing, introducing consumer-driven accountability into higher education. Pell grants should retain their current voucher-like structure.

If Congress is unwilling to reform federal student aid, then the next Administration should consider the following reforms:

- **Switch to fair-value accounting from FCRA accounting, and**
- **Consolidate all federal loan programs into one new program that**
    1. **Utilizes income-driven repayment,**
    2. **Includes no interest rate subsidies or loan forgiveness,**
    3. **Includes annual and aggregate limits on borrowing, and**
    4. **Requires "skin in the game" from colleges to help hold them accountable for loan repayment.**

The Biden Administration has mercilessly pillaged the student loan portfolio for crass political purposes without regard to the needs of current taxpayers or future students. This must never happen again.

- **As detailed in Section III, the next Administration should work with Congress to spin off federal student aid into a new government corporation with professional governance and management.**

NEW POLICY PRIORITIES FOR 2025 AND BEYOND

New Legislation That Should Be Prioritized

For nearly 250 years, Congress has incorporated public and private institutions, including banks, the District of Columbia's city government, and other organizations that federal officials deem to be conducting operations in the public interest. Such charters offer a certain status to organizations, often viewed as a "seal of approval" according to one Congressional Research Service report, which can help these organizations in their fundraising and other advocacy efforts.

When the nation's largest teacher association, the National Education Association (NEA), cites its federal charter, it lends the NEA a level of significance and suggests an effectiveness that is not supported by evidence. In fact, the NEA and the nation's other large teacher union, the American Federation of Teachers (AFT),

use litigation and other efforts to block school choice and advocate for additional taxpayer spending in education. They also lobbied to keep schools closed during the pandemic. All of these positions run contrary to robust research evidence showing positive outcomes for students from education choice policies; there is no conclusive evidence that more taxpayer spending on schools improves student outcomes; and evidence finds that keeping schools closed to in-person learning resulted in negative emotional and academic outcomes for students. Furthermore, the union promotes radical racial and gender ideologies in schools that parents oppose according to nationally representative surveys.

- **Congress should rescind the National Education Association's congressional charter and remove the false impression that federal taxpayers support the political activities of this special interest group.**

This move would not be unprecedented, as Congress has rescinded the federal charters of other organizations over the past century. The NEA is a demonstrably radical special interest group that overwhelmingly supports left-of-center policies and policymakers.

- **Members should conduct hearings to determine how much federal taxpayer money the NEA has used for radical causes favoring a single political party.**

Parental Rights in Education and Safeguarding Students

- **Federal officials should protect educators and students in jurisdictions under federal control from racial discrimination by reinforcing the Civil Rights Act of 1964 and prohibiting compelled speech.** Specifically, no teacher or student in Washington, D.C., public schools, Bureau of Indian Education schools, or Department of Defense schools should be compelled to believe, profess, or adhere to any idea, but especially ideas that violate state and federal civil rights laws.

By its very design, critical race theory has an "applied" dimension, as its founders state in their essays that define the theory. Those who subscribe to the theory believe that racism (in this case, treating individuals differently based on race) is appropriate—necessary, even—making the theory more than merely an analytical tool to describe race in public and private life. The theory disrupts America's Founding ideals of freedom and opportunity. So, when critical race theory is used as part of school activities such as mandatory affinity groups, teacher training programs in which educators are required to confess their privilege, or school

assignments in which students must defend the false idea that America is systemically racist, the theory is actively disrupting the values that hold communities together such as equality under the law and colorblindness.

- **As such, lawmakers should design legislation that prevents the theory from spreading discrimination.**

- **For K–12 systems under their jurisdiction, federal lawmakers should adopt proposals that say no individual should receive punishment or benefits based on the color of their skin.**

- **Furthermore, school officials should not require students or teachers to believe that individuals are guilty or responsible for the actions of others based on race or ethnicity.**

Educators should not be forced to discuss contemporary political issues but neither should they refrain from discussing certain subjects in an attempt to protect students from ideas with which they disagree. Proposals such as this should result in robust classroom discussions, not censorship. At the state level, states should require schools to post classroom materials online to provide maximum transparency to parents.

- **Again, specifically for K–12 systems under federal authority, Congress and the next Administration should support existing state and federal civil rights laws and add to such laws a prohibition on compelled speech.**

Advancing Legal Protections for Parental Rights in Education

While the U.S. Supreme Court and other federal courts have consistently recognized that parents have the right and duty to direct the care and upbringing of their children, they have not always treated parental rights as co-equal to other fundamental rights—like free speech or the free exercise of religion. As a result, some courts treat parental rights as a "second-tier" right and do not properly safeguard these rights against government infringement. The courts vary greatly over which species of constitutional review (rational basis, intermediate scrutiny, and strict scrutiny) to apply to parental rights cases.

This uncertainty has emboldened federal agencies to promote rules and policies that infringe parental rights. For example, under the Biden Administration's proposed Title IX regulations, schools could be required to assist a child with a social or medical gender transition without parental consent or to withhold information from parents about a child's social transition (e.g., changing their names or

pronouns). The federal government could demand that schools include curriculum or lessons regarding critical race or gender theory in a way that violates parental rights, especially if it requires minors to disclose information about their religious beliefs, or beliefs about race or gender in violation of the Protection of Pupil Rights Amendment (20 USC Sec. 1232h).

To remedy the lack of clear and robust protection for parental rights, the next Administration should:

- **Work to pass a federal Parents' Bill of Rights that restores parental rights to a "top-tier" right.** Such legislation would give families a fair hearing in court when the federal government enforces any policy against parents in a way that undermines their right and responsibility to raise, educate, and care for their children. The law would require the government to satisfy "strict scrutiny"—the highest standard of judicial review—when the government infringes parental rights.

- **Further ensure that any regulations that could impact parental rights contain similar protections and require federal agencies to demonstrate that their action meets strict scrutiny before a final rule is promulgated.**

At the same time, Congress should also consider equipping parents with a private right of action. Two federal laws provide certain privacy protections for students attending educational institutions or programs funded by the department. The Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records and allows parents and students over the age of 18 to inspect and review the student's education records maintained by the school and to request corrections to those records. FERPA also authorizes a number of exceptions to this records privacy protection that allow schools to disclose the student's education records without the consent or knowledge of the parent or student. The Protection of Pupil Rights Amendment (PPRA) requires schools to obtain parental consent before asking questions, including surveys, about political affiliations or beliefs; mental or psychological issues; sexual behaviors or attitudes; critical appraisals of family members; illegal or self-incriminating behavior; religious practices or beliefs; privileged relationships, as with doctors and clergy; and family income, unless for program eligibility.

The difficulty for parents is that FERPA and PPRA do not authorize a private right of action. If a school refuses to comply with either statute, the only remedy is for the parent or student (if over the age of 18) to file an administrative complaint with the U.S. Department of Education, which must then work with the school to obtain compliance before taking any action to suspend or terminate federal

financial assistance. Investigations can take months if not years. The department has never suspended or terminated the funding for an educational institution or agency for violating FERPA or PPRA. In essence, Congress has granted parents and students important statutory rights without an effective remedy to assert those rights.

- **The next Administration should work with Congress to amend FERPA and PPRA to provide parents and students over the age of 18 years with a private right of action to seek injunctive and declaratory relief, together with attorneys' fees and costs if a prevailing party, against educational institutions and agencies that violate rights enshrined in these statutes.** This will empower parents and students, level the playing field between families and education bureaucracies, and encourage institutional compliance with these statutory requirements.

Protect Parental Rights in Policy

In addition to strengthening legal protections for parents, the next Administration should:

- **Prioritize legislation advancing such rights.** Promising ideas have appeared in bills introduced in the 117th Congress such as H.R.8767, the Empowering Parents Act,[15] sponsored by Representative Bob Good (R-VA); H.R. 6056, the Parents' Bill of Rights Act,[16] sponsored by Representative Julia Letlow (R-LA); and H.J.Res. 99,[17] proposing an amendment to the Constitution relating to parental rights, sponsored by Representative Debbie Lesko (R-AZ).

- **These congressional actions should be carefully reviewed to make sure they complement state Parents' Bills of Rights, such as those passed in Georgia (2022), Florida (2021), Montana (2021), Wyoming (2017), Idaho (2015), Oklahoma (2014), Virginia (2013), and Arizona (2010).**

As documented by writers such as Abigail Shrier and others, the American Society of Plastic Surgeons documented a four-fold increase in the number of biological girls seeking gender surgery between 2016 and 2017. Larger increases were found in the U.K. from 2009 to 2019 and 2017 to 2018. These statistics and others point to a social contagion in which minor children, especially girls, are attempting to make life-altering decisions using puberty blockers and other hormone treatments and even surgeries to remove or alter vital body parts. Heritage Foundation research finds that providing easier access to such treatments and

surgeries without parental involvement does not reduce the suicidality of these young people and may even increase suicide rates.

- **The next Administration should take particular note of how radical gender ideology is having a devastating effect on school-aged children today—especially young girls.**

School officials in some states are requiring teachers and other school employees to accept a minor child's decision to assume a different "gender" while at school—without notifying parents. In California, New Jersey, and certain districts in Kansas and elsewhere, educators are prohibited from informing parents about children's confusion over their sex if the children do not want their parents to know. Such policies allow schools to drive a wedge between parents and children. The next Administration should work with Congress to provide an example to state lawmakers by requiring K–12 districts under federal jurisdiction, including Washington, D.C., public schools, Bureau of Indian Education schools, and Department of Defense schools, with legislation stating that:

- **No public education employee or contractor shall use a name to address a student other than the name listed on a student's birth certificate, without the written permission of a student's parents or guardians.**

- **No public education employee or contractor shall use a pronoun in addressing a student that is different from that student's biological sex without the written permission of a student's parents or guardians.**

- **No public institution may require an education employee or contractor to use a pronoun that does not match a person's biological sex if contrary to the employee's or contractor's religious or moral convictions.**

State lawmakers should use this model and adopt similar provisions for public schools within their borders. Federal lawmakers should not allow public school employees to keep secrets about a child from that child's parents.

Advance School Choice Policies

The D.C. Opportunity Scholarship Program, a voucher program providing scholarships to children from low-income families living in the nation's capital to attend a private school of choice, is capped at $20 million annually and limited to

students at or below 185 percent of the federal poverty line. The maximum scholarship amount is $9,401 for students in kindergarten through eighth grade and $14,102 for students in grades nine through 12. The average scholarship amount is around $10,000, or less than half of the current per-student funding amount in D.C. Public Schools.

- **Congress should expand eligibility to all students, regardless of income or background, and raise the scholarship amount closer to the funding students receive in D.C. Public Schools (spending per student in 2020 was $22,856).**

- **All families should be able to take their children's taxpayer-funded education dollars to the education providers of their choosing—whether it be a public school or a private school.**

- **Congress should additionally deregulate the program by removing the requirement of private schools to administer the D.C. Public Schools assessment and allowing private schools to control their admissions processes.**

Provide Education Choice for Populations Under the Jurisdiction of Congress

The federal government oversees three school systems that Washington should transform into examples of quality learning environments for every child in those systems: students attending schools in Washington, D.C.; students in active-duty military families, including students attending schools operated by the U.S. Department of Defense; and students attending schools on tribal lands, which include schools under the Bureau of Indian Education. In each of these systems, federal lawmakers should allow every student the option of using an education savings account so that parents can select different education products and services to meet their child's needs.

Nearly 50,000 students attended public schools in the District of Columbia in the 2021–2022 school year. In 2022, fourth grade math students scored 11 points lower than fourth graders in 2019, which means District children lost an entire year of learning over the course of the pandemic. Eighth graders also lost an entire year of learning in math.

- **Federal lawmakers should offer District students the opportunity to use education savings accounts.** A portion of a child's federal education spending should be deposited in a private spending account that parents can use to pay for personal tutors, education therapists, books and curricular

materials, private school tuition, transportation and more—accounts modeled after the accounts in Arizona, Florida, West Virginia, and seven other states.

- **Members of Congress should design the same account system for students in active-duty military families, including students attending schools that receive funding under the National Defense Authorization Act (NDAA).**[18]

Heritage Foundation research found that if even 10 percent of the students eligible for accounts under such a proposal transferred from an assigned school to an education savings account, the change for the sending district would be 0.1 percent of that school district's K–12 budget. Even in heavily impacted districts (districts with a large number of students receiving Impact Aid), the budgetary effect would be less than 2 percent. Yet these children would then have the chance to receive a customized education that meets their unique needs. As with state ESA programs, families who are homeschooling are distinct in statute from families who use an ESA to customize an education at home.

Furthermore, research from the Claremont Institute used documents provided by a whistleblower demonstrating how educators at Department of Defense schools around the world are using radical gender theory and critical race theory in their lessons. This instructional material discards biology in favor of political indoctrination and applies critical race theory's core tenets advocating for more racial discrimination. Such ideas are highly unpopular among parents, according to nationally representative surveys, and the course material attempts to indoctrinate students with radical ideas about race and the ambiguous concept of "gender."

Finally, schools on tribal lands and under the auspices of the Bureau of Indian Education (BIE) are among the worst-performing public schools in the country. Research from Rep. Burgess Owens' office reports that the graduation rate for BIE students is 53 percent, lower than the average for Native American students in public schools around the country, and nearly 30 percentage points lower than the national average for all students. In 2015, Arizona lawmakers expanded the state's education savings account program to include children living on tribal lands, and by 2021, nearly 400 Native American children were using the accounts.

- **Federal officials should design a federal education savings account option for all children attending BIE schools.**

The next Administration should make the K–12 systems under federal jurisdiction examples of quality learning opportunities and education freedom.

Washington should convert some of the lowest-performing public school systems in the country into areas defined by choices, creating rigorous learning options for all children and from all backgrounds, income levels, and ethnicities.

Expand Education Choice Through Portability of Existing Federal Funds

Setting education policy on the right track long term would require sunsetting the U.S. Department of Education altogether. Doing so would not result in fewer resources and less assistance for children with special needs or from low-income families. Rather, closing the federal behemoth would better target existing taxpayer resources already set aside for these students by shifting oversight responsibilities to federal and state agencies that have more expertise in helping these populations.

The Individuals with Disabilities Education Act (IDEA) is the federal law governing taxpayer spending on K–12 students with special needs. The law stipulates that students have a right to a "free and appropriate education," and 95 percent of children with special needs attend assigned public schools. The education is not always appropriate, however: Special education is fraught with legal battles. Some argue that the education of children with special needs is the most litigated area of K–12 education. Thus, despite a nearly 50-year-old federal law that sees regular revision and reauthorization and approximately $13.5 billion per year in federal taxpayer spending, parents still struggle to establish intervention plans for their students with public school district officials regarding the physical and educational requirements for their children with special needs.

State-level education options often exclusively serve children with special needs for these very reasons. Florida, Oklahoma, Tennessee, Mississippi, South Carolina, and North Carolina, to name a few states, all have education savings accounts or K–12 private school scholarship options for children with special needs.

- **Federal lawmakers should move IDEA oversight and implementation to the U.S. Department of Health and Human Services.**

- **Officials should then consider revising IDEA to require that a child's portion of the federal taxpayer spending under the law be made available to families so parents can choose how and where a child learns.**

- **IDEA already allows families to choose a private school under certain conditions, but federal officials should update the law so that families can use their child's IDEA spending for textbooks, education therapies, personal tutors, and other learning expenses, similar to the way in which parents use education savings accounts in states such as Arizona and Florida.** These micro-education savings accounts

would give the families of children with special needs approximately $1,800 per child to help meet a child's unique learning needs.

- **Members of Congress and the White House should consider a similar update to Title I of the Elementary and Secondary Education Act (ESEA).** Title I is the largest portion of federal taxpayer spending under this federal education law, and the section provides additional taxpayer resources to schools or groups of schools in lower income areas. Federal taxpayers committed $16.3 billion to Title I in FY 2019, spending that is dedicated to students in low-income areas of the U.S. Per student, this spending amounts to more than $1,400 for a child in a large city and approximately $1,300 for a student in a remote, rural area.[19]

Research finds, though, that this enormous investment has not produced positive results for children in need. The achievement gap between children from the highest and lowest income deciles has not improved over the past 50 years. And recent, dismal outcomes on the National Assessment of Educational Progress showed declines for all students, with math scores registering declines for the first time in history.

- **Initially, the responsibilities for administering and overseeing Title I should be moved to HHS, along with IDEA.**

- **Students attending schools that receive Title I spending should also have access to micro-education savings accounts that allow families to choose how and where their children learn according to their needs.**

- **Parents should be allowed to use their child's Title I resources to help pay for private learning options including tutoring services and curricular materials.**

- **Over a 10-year period, the federal spending should be phased out and states should assume decision-making control over how to provide a quality education to children from low-income families.**

Additional School Choice Options

House Republicans included school choice in their "Commitment to America" agenda.

- **Though actions by state lawmakers are essential and any federal policies should be strictly designed so they do not conflict with state activities, Congress could consider school choice legislation such**

as the Educational Choice for Children Act. This bill would create a federal scholarship tax credit that would incentivize donors to contribute to nonprofit scholarship granting organizations (SGOs). Eligible families could then use that funding from the SGOs for their children's education expenses including private school tuition, tutoring, and instructional materials.

ADDITIONAL K–12 REFORMS

Allowing States to Opt Out of Federal Education Programs. States should be able to opt out of federal education programs such as the Academic Partnerships Lead Us to Success (APLUS) Act. Much of the red tape and regulations that hinder local school districts are handed down from Washington. This regulatory burden far exceeds the federal government's less than 10 percent financing share of K–12 education. In the most recent fiscal year (FY 2022), states and localities financed 93 percent of K–12 education costs, and the federal government just 7 percent. That 7 percent share should not allow the federal government to dictate state and local education policy.

- **To restore state and local control of education and reduce the bureaucratic and compliance burden, Congress should allow states to opt out of the dozens of federal K–12 education programs authorized under the Elementary and Secondary Education Act, and instead allow states to put their share of federal funding toward any lawful education purpose under state law.** This policy has been advanced over the years via a proposal known as the Academic Partnerships Lead Us to Success (APLUS) Act.

HIGHER EDUCATION REFORM

HEA: Accreditation Reform

Congress established two primary responsibilities for the U.S. Department of Education in the HEA: 1) to ensure the "administrative capacity and financial responsibility" of colleges and universities that accept Title IV funds; and 2) to ensure the quality of those institutions. Congress did not endow the Department of Education with the authority to involve itself in academic quality issues relating to colleges and universities that participate in the Title IV student aid program; the HEA allows the agency only to recognize accreditors, which are then supposed to provide quality assurance measures.

Unfortunately, the Biden Administration has followed closely in the footsteps of the Obama Administration by engaging in a politically motivated and inconsistent administration of the accrediting agency recognition process. As a result, accreditors have transformed into *de facto* government agents. Despite claims by

the department and accreditation agencies that accreditation is voluntary, the fact that Americans are denied access to an otherwise widely available entitlement benefit if the institution "elects" to not be accredited makes accreditation anything but voluntary. Today, accreditation determines whether Americans can access federal student aid benefits, transfer academic credits, enroll in higher-level degree programs, and even qualify for federal employment.

Unnecessarily focused on schools in a specific geographic region, institutional accreditation reviews have also become wildly expensive audits by academic "peers" that stifle innovation and discourage new institutions of higher education. Of particular concern are efforts by many accreditation agencies to leverage their Title IV (student loans and grants) gatekeeper roles to force institutions to adopt policies that have nothing to do with academic quality assurance and student outcomes. One egregious example of this is the extent to which accreditors have forced colleges and universities, many of them faith-based institutions, to adopt diversity, equity, and inclusion policies that conflict with federal civil rights laws, state laws, and the institutional mission and culture of the schools. Perhaps more distressingly, accreditors, while professing support for academic freedom and campus free speech, have presided over a precipitous decline in both over the past decade. Despite maintaining criteria that demand such policies, accreditors have done nothing to dampen the illiberal chill that has swept across American campuses over the past decade.

The current system is not working. A radical overhaul of the HEA's accreditation requirements is thus in order. The next Administration should work with Congress to amend the HEA and should consider the following reforms:

- **Prohibit accreditation agencies from leveraging their Title IV gatekeeper role to mandate that educational institutions adopt diversity, equity, and inclusion policies.**

- **Protect the sovereignty of states to decide governance and leadership issues for their state-supported colleges and universities by prohibiting accreditation agencies from intruding upon the governance of state-supported educational institutions.**

- **Protect faith-based institutions by prohibiting accreditation agencies from:**

  1. **Requiring standards and criteria that undermine the religious beliefs of, or require policies or conduct that conflict with, the religious mission or religious beliefs of the institution; and**

2. **Intruding on the governance of colleges and universities controlled by a religious organization.**

- **Revamp the system for recognizing accreditation agencies for Title IV purposes by removing the department's monopoly on recognition by (1) authorizing states to recognize accreditation agencies for Title IV gatekeeping purposes and/or (2) authorizing state agencies to act as accreditation agencies for institutions throughout the United States.**

The next Administration and Congress might also consider amending the HEA to remove accreditors from the program triad entirely to allow accreditation to return to its original role of voluntary quality assurance. This would permit accreditors to put some "teeth" back into their standards without creating high-stakes disasters, such as institutional loss of Title IV access through paperwork submission errors, a state exercising its constitutional authority to administer its public colleges and universities, or an institution freely exercising the religious beliefs of its founders. With this option, neither the department nor the states would oversee or recognize accrediting agencies. The department's role would be limited to evaluating the institution's compliance with federal accounting requirements pursuant to evaluations conducted by appropriately credentialed auditors who have no conflicts of interest in performing the review paid for by the federal agency charged with overseeing compliance—not the institutions being reviewed.

HEA: Student Loans

- **Beyond immediate policy moves and rulemaking to end the current Administration's abuse of the department's payment pause and HEA loan forgiveness programs, the department should work with Congress to overhaul the federal student loan program for the benefit of taxpayers and students.**

The federal government does not have the proper incentives to make sound lending decisions. The new Administration should consider:

- **Privatizing all lending programs, including subsidized, unsubsidized, and PLUS loans (both Grad and Parent).** This would allow for market prices and signals to influence educational borrowing, introducing consumer-driven accountability into higher education. Pell grants should retain their current voucher-like structure.

If privatizing student lending is not feasible, then the next Administration should consider the following reforms:

- **Switch to fair-value accounting from FCRA accounting.**

- **Consolidate all federal loan programs into one new program that a) utilizes income-driven repayment, b) includes no interest rate subsidies or loan forgiveness, c) includes annual and aggregate limits on borrowing, and d) includes skin in the game to hold colleges accountable.**

- **Eliminate Grad PLUS loans (for graduate students) and Parent PLUS loans (for parents of undergraduates).**

Graduate students are already eligible for unsubsidized Stafford student loans; Grad PLUS loans are redundant. They also lack some of the safeguards of Stafford loans, such as annual and aggregate borrowing limits. Parent PLUS loans are also redundant because there are many privately provided alternatives available.

- **The Public Service Loan Forgiveness program, which prioritizes government and public sector work over private sector employment, should be terminated.**

Whatever Congress chooses to do with future loans, there is still the question of the government's responsible stewardship of the existing student loan portfolio—a substantial taxpayer asset. The current Administration has recklessly engaged in the policy fetish of forgiving and canceling student loans with abandon.

- **The next Administration should work with Congress to amend the HEA to ensure that no Administration engages in this kind of abuse in the future.**

- **Specifically, the new Administration should urge the Congress to amend the HEA to abrogate, or substantially reduce, the power of the Secretary to cancel, compromise, discharge, or forgive the principal balances of Title IV student loans, as well as to modify in any material way the repayment amounts or terms of Title IV student loans.**

- **Further, the next Administration should propose that Congress amend the HEA to remove the department's authority to forgive loans based on borrower defense to repayment; instead, the department**

should be authorized to discharge loans only in instances where clear and convincing evidence exists to demonstrate that an educational institution engaged in fraud toward a borrower in connection with his or her enrollment in the institution and the student's educational program or activity at the institution.

Cap indirect costs at universities. Currently, the federal government pays a portion of the overhead expenses associated with university-based research. Known as "indirect costs," these reimbursements cross-subsidize leftist agendas and the research of billion-dollar organizations such as Google and the Ford Foundation. Universities also use this influx of cash to pay for Diversity, Equity, and Inclusion (DEI) efforts. To correct course,

- **Congress should cap the indirect cost rate paid to universities so that it does not exceed the lowest rate a university accepts from a private organization to fund research efforts. This market-based reform would help reduce federal taxpayer subsidization of leftist agendas.**

NEW REGULATIONS

Attacking the Accreditation Cartel

For a college to participate in federal financial aid programs, it must be accredited, but accreditors have been abusing their quasi-regulatory power to impose non-educational requirements and ideological preferences on colleges.

- **The Secretary of Education should refuse to recognize all accreditors that abuse their power.**

- **New accreditors should also be encouraged to start up.**

Confronting the Chinese Communist Party's Influence on Higher Education

According to media reports, more than 100 universities in the U.S. received nearly $100 billion in gifts and grants from China-based sources between 2013 and 2020. Much of this money derives from the Chinese Communist Party and its proxies. The next Administration must

- **Reverse the Biden Administration's refusal to enforce Section 117 of the HEA, which directs colleges and universities to report gifts from, and contracts with, sources outside the U.S. worth $250,000 or more.**

- **Investigate postsecondary institutions that fail to honor their Section 117 obligations and make appropriate referrals to DOJ.**

- **Work with Congress to amend the HEA to tie the HEA's foreign source reporting requirements to an institution's ability to receive federal financial assistance, particularly participation in programs funded under Titles IV and VI of the HEA.**

Allowing Competency-Based Education to Flourish

Competency-based education is a promising approach that could provide a high-quality and affordable education to many students. Since the credit hour, which measures the time in the classroom, is inappropriate for such programs, the direct assessment method was introduced to allow competency-based programs to participate in the federal financial aid programs. However, overregulation has hampered the usage of direct assessment, with the leading competency-based university choosing to instead convert their courses into credit hours for compliance purposes. One of the leading obstacles is the requirement that courses include "regular and substantive" interaction between faculty and students.

- **New regulations should clarify the definition and requirements of regular and substantive interaction for competency-based education, as well as for online programs.**

Reforming "Area Studies" Funding

- **Congress should wind down so-called "area studies" programs at universities (Title VI of the HEA), which, although intended to serve American interests, sometimes fund programs that run counter to those interests.**

- **In the meantime, the next Administration should promulgate a new regulation to require the Secretary of Education to allocate at least 40 percent of funding to international business programs that teach about free markets and economics and require institutions, faculty, and fellowship recipients to certify that they intend to further the stated statutory goals of serving American interests.**

NEW EXECUTIVE ORDERS THAT THE PRESIDENT SHOULD ISSUE

Guidance Documents

- **The President should immediately reinstate and reissue Executive Order 13891: Promoting the Rule of Law Through Improved Agency Guidance Documents, 84 Fed. Reg. 55235 (Oct. 9, 2019), and Executive Order 13892: Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication (Oct. 15, 2019).**

These executive orders required all federal agencies to treat guidance documents as non-binding in law and practice and also forbade federal agencies from imposing new standards of conduct on persons outside the executive branch through guidance documents. They required all federal agencies to apply regulations and statutes instead of guidance documents in any enforcement action. President Biden revoked these executive orders on January 20, 2021, demonstrating that these executive orders effectively restrained the abuses of an expansive administrative state.

- **Require APA notice and comment.** The President should issue an executive order requiring the Office for Civil Rights' Case Processing Manual to go through APA (Administrative Procedures Act) notice and comment.

- **Protect the First Amendment.** The President should issue an executive order requiring grant applications (SF-424 series) to contain assurances that the applicant will uphold the First Amendment in funded programs and work.

- **Minimize bachelor's degree requirements.** The President should issue an executive order stating that a college degree shall not be required for any federal job unless the requirements of the job specifically demand it.

- **Eliminate the "list of shame."** Educational institutions can claim a religious exemption with the Office for Civil Rights at the Department of Education from the strictures of Title IX. In 2016, the Obama Administration published on the Department of Education's website a list of colleges that had applied for the exemption. This "list of shame" of faith-based colleges, as it came to be known, has since been archived on ED's website, still publicly available. The President should issue an executive order removing the archived list and preventing such a list from being published in the future.

NEW AGENCY POLICIES THAT DON'T REQUIRE NEW LEGISLATION OR REGULATIONS TO ENACT

Transparency of FERPA and PPRA Complaints

- **The Department of Education should be transparent about complaints filed on behalf of families regarding the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA).**

- **At the same time, the Department of Education should develop a portal and resources for parents on their rights under FERPA and PPRA.** This portal should also contain an explanation of the Health Insurance Portability and Accountability Act (HIPPA) and public school procedures to demonstrate that the law does not deprive parents of their right to access any school health records.

The D.C. Opportunity Scholarship Program

In 2011, Congress added new requirements to the D.C. Opportunity Scholarship Program stating that participating private schools must submit to site visits by the program administrator, inform prospective students about the school's accreditation status, mandate that teachers of core subjects have bachelor's degrees, and require participating students to take some form of nationally norm-referenced test. Notably, the 2011 reauthorization also required, for the first time, that participating private schools be accredited or be on a path to accreditation. The 2017 reauthorization went further, requiring that each participating school supply a certificate of accreditation to the administering entity upon program entry, demonstrating that the school is fully accredited before being allowed to participate. The list of approved accreditors is entirely too small to serve the mission of the diverse schools in the nation's capital.

- **Although the accreditation regulations should be removed entirely by Congress, in the meantime, the next President should issue an executive order expanding the list of allowable accreditors.**

Transparency Around Program Performance and DEI Influence

The next President should issue a series of executive orders requiring:

- **An accounting of how federal programs/grants spread DEI/CRT/gender ideology,**

- **A review of outcomes for GEAR UP and the 21st Century grants programs,**

- **The reissuing of the report on school safety from 2018 with updated information,**
- **The release of a report to Congress on how to consolidate the department and trim nonessential employees,**
- **A report on the negative influence of action civics on students' understanding of history and civics and their disposition toward the United States,**
- **An update of the Coleman report to show the impact of family structure on student achievement,**
- **A full accounting of CARES Act education expenditures, and**
- **A report on how many dollars make their way to the classroom in every federal education grant and program.**

Pursue Antitrust Against Accreditors

- **The President should issue an executive order pursuing antitrust against college accreditors, especially the American Bar Association (ABA).**

NEW POLICIES/REGULATIONS THAT REQUIRE COORDINATION WITH OTHER AGENCIES AND/OR THE WHITE HOUSE

The department must coordinate any rulemaking with the White House, the Office of Management and Budget (OMB), DOJ, and other agencies that share responsibility with the department in the administration or enforcement of statute, such as Titles VI and IX. Moreover, regarding regulations arising under civil rights laws administered by the department, Executive Order 12550 requires the Attorney General to approve final regulations; the Assistant Attorney General for Civil Rights must approve notices of proposed rulemaking.

Organizational Issues

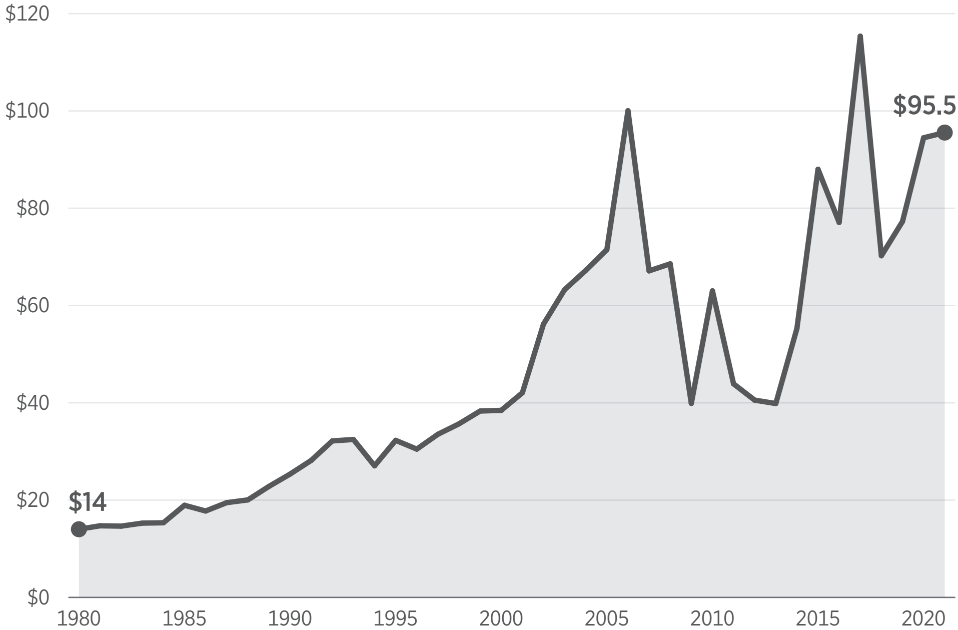
Historical Budget Information. Congressional appropriations for the U.S. Department of Education have risen from $14 billion in 1980 to $95.5 billion in 2021, an astounding increase, especially in light of the lack of improvements in student outcomes.

Recommend Budget Cuts, Shifts, and Augmentations, If Any. Transferring most of the programs at the U.S. Department of Education to other agencies and eliminating duplicative and ineffective programs would yield significant taxpayer

CHART 4

U.S. Department of Education, Total Appropriations

IN BILLIONS OF DOLLARS



NOTE: Totals include mandatory and discretionary appropriations.
SOURCE: U.S. Department of Education, "Budget History Tables," Education Department Budget History Table, https://www2.ed.gov/about/overview/budget/history/index.html (accessed March 17, 2023).

heritage.org

savings. The proposal would immediately save more than $17 billion annually in various programs. Savings over a decade would be far more robust, as the revenue responsibility for many formula grant programs would be returned to the states. Some highlights include:

- **Eliminate competitive grant programs and reduce spending on formula grant programs.** Competitive grant programs operated by the Department of Education should be eliminated, and federal spending should be reduced to reflect remaining formula grant programs authorized under Title I of the Elementary and Secondary Education Act (ESEA) and the handful of other programs that do not fall under the competitive/ project grant category. Remaining programs managed by the Department

of Education, such as large formula grant programs for K–12 education, should be reduced by 10 percent. This would cut approximately 29 programs, most of which are discretionary spending. In total, this would generate approximately $8.8 billion in savings.

- **Eliminate the PLUS loan program.** As mentioned above, the PLUS loan program, which provides graduate student loans and loans to the parents of undergraduate students, should be eliminated. This would generate an estimated $2.3 billion in savings.

- **End time-based and occupation-based student loan forgiveness.** A low estimate suggests ending current student loan forgiveness schemes would save taxpayers $370 billion.

- **Eliminate GEAR-UP.** It is not the responsibility of the federal government to provide taxpayer dollars to create a pipeline from high school to college. GEAR UP should be eliminated, and its functions should instead be handled privately or at the state and local levels, where policymakers are better equipped to increase college preparedness within their school districts.

Personnel

The Department of Education currently employs approximately 4,400 individuals. As programs are eliminated or transferred to other agencies, those employees whose positions are determined to be essential to the mission would move with their constituent programs. Current salaries and expenses at ED total $2.2 billion annually.

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but Jonathan Butcher, Bob Eitel, Jim Blew, Diane Auer Jones, Erin Valdez, Andrew Gillen, and Max Eden deserve special mention. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

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12

DEPARTMENT OF ENERGY AND RELATED COMMISSIONS

Bernard L. McNamee

AMERICAN ENERGY AND SCIENCE DOMINANCE

The next conservative Administration should prioritize energy and science dominance to ensure that Americans have abundant, affordable, and reliable energy; create good-paying jobs; support domestic manufacturing and technology leadership; and strengthen national security. Achieving these goals will require bold policy action and reforms that involve the U.S. Department of Energy (DOE); the Federal Energy Regulatory Commission (FERC); and the Nuclear Regulatory Commission (NRC).

American Energy Dominance. Access to affordable, reliable, and abundant energy is vital to America's economy, national security, and quality of life. Yet ideologically driven government policies have thrust the United States into a new energy crisis just a few short years after America's energy renaissance, which began in the first decade of the 2000s, transformed the United States from a net energy importer (oil and natural gas) to energy independence and then energy dominance. Americans now face energy scarcity, an electric grid that is less reliable, and artificial shortages of natural gas and oil despite massive reserves within the United States—all of which has led to higher prices that burden both the American people and the economy.

The new energy crisis is caused not by a lack of resources, but by extreme "green" policies. Under the rubrics of "combating climate change" and "ESG" (environmental, social, and governance), the Biden Administration, Congress, and various states, as well as Wall Street investors, international corporations, and progressive special-interest groups, are changing America's energy landscape. These ideologically

driven policies are also directing huge amounts of money to favored interests and making America dependent on adversaries like China for energy. In the name of combating climate change, policies have been used to create an artificial energy scarcity that will require trillions of dollars in new investment, supported with taxpayer subsidies, to address a "problem" that government and special interests themselves created. The result has been increased energy costs that:

- Hurt individuals and families, especially low-income Americans and seniors on fixed incomes;

- Make businesses that create the jobs that drive our economy and quality of life less competitive; and

- Make America less energy secure.

Moreover, increased energy scarcity will allow government, either directly or through access to banks and Wall Street investors, to decide who is "worthy" to receive funding for energy projects. In the end, government control of energy is control of people and the economy. This is one reason why the trend toward nationalization of our energy industry through government mandates, bans on the production and use of oil and natural gas, and nationalization of the electric grid is so dangerous.

At the same time, adversaries like China, Russia, North Korea, Iran, and non-state actors are constantly engaged in cyberattacks against our energy infrastructure. We have already seen what supposedly "minor" attacks, such as the cyberattack on the Colonial Oil Pipeline[1] or the physical attack on electric infrastructure in North Carolina,[2] can do. A coordinated cyber and physical attack on natural gas pipelines and the electric grid during an extended cold spell could be catastrophic. Yet the current Administration's first concern is plowing taxpayer dollars into intermittent wind and solar projects and ending the use of reliable fossil fuels.

A conservative President must be committed to unleashing all of America's energy resources and making the energy economy serve the American people, not special interests. This means that the next conservative Administration should:

- **Promote** American energy security by ensuring access to abundant, reliable, and affordable energy.

- **Affirm** an "all of the above" energy policy through which the best attributes of every resource can be harnessed for the benefit of the American people.

- **Support** repeal of massive spending bills like the Infrastructure Investment and Jobs Act (IIJA)[3] and Inflation Reduction Act (IRA),[4] which established new programs and are providing hundreds of billions of dollars in subsidies to renewable energy developers, their investors, and special interests, and support the rescinding of all funds not already spent by these programs.

- **Unleash** private-sector energy innovation by ending government interference in energy decisions.

- **Stop** the war on oil and natural gas.

- **Allow** individuals, families, and business to use the energy resources they want to use and that will best serve their needs.

- **Secure and protect** energy infrastructure from cyber and physical attacks.

- **Refocus** the Department of Energy on energy security, accelerated remediation, and advanced science.

- **Promote** U.S. energy resources as a means to assist our allies and diminish our strategic adversaries.

- **Refocus** FERC on ensuring that customers have affordable and reliable electricity, natural gas, and oil and no longer allow it to favor special interests and progressive causes.

- **Ensure** that the Nuclear Regulatory Commission facilitates rather than hampers private-sector nuclear energy innovation and deployment.

American Science Dominance. Ever since the age of Benjamin Franklin, the United States has been at the forefront of scientific discovery and technological advancement. Beginning with the groundbreaking science of the Manhattan Project, the U.S. has developed 17 National Laboratories that conduct fundamental and advanced scientific research. The National Labs have been critical in supporting national defense and ensuring that the United States leads on scientific discoveries with transformative applications that benefit America and the world.

In recent years, however, U.S. science has been under threat. Externally, adversaries like the Chinese military have been engaged in scientific espionage, infiltrating taxpayer-funded scientific research projects, and funding their own science research. In addition, the National Labs have been too focused on climate change and renewable technologies.

American science dominance is critical to U.S. national security and economic strength. The next conservative President therefore needs to recommit the United States to ensuring this dominance.

MISSION STATEMENT FOR A REFORMED DEPARTMENT OF ENERGY

The Department of Energy should be renamed and refocused as the Department of Energy Security and Advanced Science (DESAS). DESAS would refocus on DOE's five existing core missions:

- Providing leadership and coordination on energy security and related national security issues,
- Promoting U.S. energy economic interests abroad,
- Leading the nation and the world in cutting-edge fundamental advanced science,
- Remediating former Manhattan Project and Cold War nuclear material sites, and
- Developing new nuclear weapons and naval nuclear reactors.

These missions work together by using advanced science to promote national security while getting the government out of the business of picking winners and losers in energy resources. Reform is needed because DOE, instead of focusing on core energy and security issues, has been spending billions of taxpayer dollars to subsidize renewable energy developers and investors, thereby making Americans less energy secure and distorting energy markets.

OVERVIEW

DOE was created by the Department of Energy Organization Act of 1977[5] in response to the 1970s oil crisis, consolidating various energy programs that previously had operated without coordination throughout the federal government in a single department. In addition to addressing energy issues, DOE is tasked with:

- Engaging in basic and fundamental science and research through the 17 National Laboratories;
- Cleaning up the Manhattan Project and Cold War nuclear material and weapons sites;

- Developing sites for the storing of civilian nuclear waste; and
- Developing new nuclear weapons and naval reactors through the semiautonomous National Nuclear Security Agency (NNSA).

Beyond these core responsibilities, DOE currently administers billions of dollars that support research and commercialization of energy technology, provides loans to the private sector for energy infrastructure and technology commercialization, and issues energy efficiency standards for appliances. More recently, DOE has focused its work and taxpayers' money on renewable energy and climate change.[6]

It is one thing for government to engage in fundamental scientific research that the private sector would not perform, particularly because advancements in science promote national security through technological prowess. Government, however, should not be picking winners and losers in dealing with energy resources or commercial technology. Such government favoritism can crowd out new innovation, devolve into cronyism, and raise energy prices for consumers and businesses. It is time for the United States to use all of its energy resources again for the benefit of the American people.

New Policies: Energy

To ensure that the American people have access to abundant, affordable, and reliable energy, DESAS's energy role should be focused on:

- Working with the energy industry and networks to ensure energy infrastructure security through science and coordination with the private sector.
- Assessing international energy issues that constitute threats to U.S. national security.
- Promoting U.S. energy resources as a means to assist our allies, diminish our strategic adversaries, and ensure the existence of markets that will support domestic energy production.
- Pursuing early and advanced science, including materials science, that is related to energy and national security.
- Developing the leadership necessary for the disposal of commercial and government spent nuclear fuel.

National Energy Security. Protecting American infrastructure from cyber and physical threats, both natural and human, is vital to national security, the economy, and the well-being of the American people. Protecting and advancing these national security interests is a proper role for the federal government. DESAS should:

- **Focus on studying threats to the electric grid, natural gas, and oil infrastructure; sharing such information with the energy industry; promoting the reliability and security of energy resources and infrastructure; and developing strategies and technologies to combat threats by working with the National Labs.** The following offices would report to the DESAS Undersecretary of Energy Security:

    1. Office of Cybersecurity, Energy Security, and Emergency Response (CESER), elevated to an Assistant Secretary. CESER would work with the existing or reconstituted versions (as described in more detail below) of the Office of Electricity (OE); Office of Nuclear Energy (NE); Office of Fossil Energy (FE), currently the Office of Fossil Energy and Carbon Management (FECM); Office of Energy Efficiency and Renewable Energy (EERE); and the Strategic Petroleum Reserve (SPR) to identify and address threats to energy infrastructure.[7] Instead of trying to decarbonize the American economy and allocating taxpayer dollars for commercialization of energy technologies, these offices would focus on energy security by identifying threats to energy supplies and infrastructure, developing strategies to address those threats, and funding fundamental science and technology where appropriate.

    2. Office of Electricity (Assistant Secretary).

    3. Office of Nuclear Energy (Assistant Secretary).

    4. Office of Fossil Energy (Assistant Secretary, with Carbon Management deleted from its title and purpose.

    5. Office of Energy Efficiency and Renewable Energy (Assistant Secretary).

    6. Strategic Petroleum Reserve (stand-alone or part of CESER).

- **Eliminate special-interest funding programs.** Many DOE energy funding programs are not targeted on fundamental science and technology; instead, they focus more on commercialization and act as subsidies to the

private sector for government-favored resources. The DOE Office of Clean Energy Demonstrations (OCED); Office of State and Community Energy Programs; ARPA-E; Office of Grid Deployment (OGD); and DOE Loan Program should be eliminated or reformed. If they continue to exist, FECM, NE, OE, and EERE should focus on fundamental science and technology issues, particularly in relation to cyber and physical threats to energy security, rather than subsidizing and commercializing energy resources.

- **Eliminate political and climate-change interference in DOE approvals of liquefied natural gas (LNG) exports.** In addition, Congress should reform the Natural Gas Act[8] to expand required approvals from merely nations with free trade agreements to all of our allies, such as NATO countries.

- **Focus the Federal Energy Management Program (FEMP) on ensuring that government buildings and operations have reliable and cost-effective energy.** FEMP should stop using taxpayer dollars to force the purchase of more expensive and less reliable energy resources in the name of combating climate change.

- **Ensure that information provided by the U.S. Energy Information Agency (EIA), a data and statistical organization, is data-neutral.**

- **Focus FERC on its statutory obligation to ensure access to reliable energy at just, reasonable, and nondiscriminatory rates.** FERC is a five-member commission created under the DOE Organization Act that regulates the wholesale sales and transmission of electricity, promotes electric reliability through standards, permits natural gas pipelines and LNG export facilities, sets natural gas pipeline shipping rates, and sets oil pipeline shipping rates. It is an economic regulator and should not make itself a climate regulator.

- **Streamline the nuclear regulatory requirements and licensing process.** Such changes would help to lower costs and accelerate the development and deployment of civilian nuclear, such as advanced nuclear reactors (including small modular nuclear reactors). The Nuclear Regulatory Commission (NRC) is commission tasked with the licensing of civilian nuclear reactors and power plants and regulating other uses of nuclear materials, such as nuclear medicine. Although it is not a DOE agency, its jurisdiction over nuclear reactor, fuel, safety, and trade issues often relates to or impinges on DOE's jurisdiction.

- **Focus on energy and science issues, not politicized social programs.** The next Administration should stop using energy policy to advance politicized social agendas. Programs that sound innocuous, such as "energy justice,"[9] Justice40,[10] and DEI,[11] can be transformed to promote politicized agendas. DOE should focus on providing all Americans with access to abundant, affordable, reliable, and secure energy, and DOE should manage its employees so that everyone is treated fairly based on his or her talent, skills, and hard work.

New Policies: International Energy Security

To help the President and policymakers understand and apply U.S. energy interests in international affairs more effectively, various DOE programs offices need to be reformed.

- **Promote American energy interests.** The next Administration should make U.S. energy dominance a key component of its foreign policy while ensuring that domestic and international goals are aligned. American energy dominance will allow the United States to secure energy for its citizens, markets for its energy exports, and access to new energy natural resources and will provide tools for U.S. policymakers to assist our allies and deter our adversaries. DESAS should analyze U.S. international energy security interests and develop a National Energy Security Strategy (NESS). This strategy would take account of the energy landscape across the globe to inform the President in his foreign policy and defense roles, but it should not be a tool for U.S. industrial policy, although it might highlight how current domestic industrial and climate policies threaten U.S. energy and national security.

- **Strengthen the role of the new Department of Energy Security and Advanced Science.** There are frequent turf battles on energy issues between the Department of State and DOE. Although the State Department clearly has the policymaking authority under the DOE Organization Act, it tends to ignore the expertise and perspectives that DOE provides. The existing Assistant Secretary for International Affairs should provide the principal support for the DOE Secretary and Deputy Secretary on National Security Council (NSC) activities and should interface with colleagues at the Departments of Defense, State, Treasury, and Commerce, as well as the Intelligence Community (IC).

New Policies: Advanced Science

To ensure that America continues to lead the world in fundamental science, the National Labs should be refocused, and national science policy should be reviewed and coordinated.

- **Refocus the National Labs on fundamental and advanced science.** DOE currently oversees 17 National Laboratories. The three National Labs run by DOE's NNSA should continue to focus on national security issues. The remaining 14 science and energy labs should focus on basic research projects; demonstration and deployment of technology should be left to the private sector. This goal can be achieved by realigning the labs to limit duplication and mission creep and to maximize potential.

- **Conduct a whole-of-government assessment and consolidation of science.** Before the start of a new Administration, there should be a review of all the federal science agencies.[12] This should include a review of the ill-advised attempt to expand the National Science Foundation's mission from supporting university research to supporting an all-encompassing technology transition. Specific to DOE, there should be a review to measure, prioritize, and consolidate DOE programs based on a range of beneficial factors, including degree of relationship to national security; furtherance of energy security (cyber but also international aspects); and importance to scientific discovery/advancement.

New Policies: Remediation of Nuclear Weapons Development Programs and Civilian Nuclear Waste

Cleaning up the radioactive waste produced in support of the Manhattan Project and the Cold War at America's nuclear development sites is a massive and complicated process led by DOE's Office of Environmental Management. Projected liabilities and costs to be borne by America's taxpayers, according to DOE's FY 2023 budget request, total $887,205 billion.[13] In addition, the federal government is required by law to dispose of nuclear waste produced by the private sector, including spent fuel rods from nuclear power plants. The new DESAS should:

- **Continue DOE's remediation of radioactive waste created by the nuclear weapons projects from the Manhattan Project and Cold War.** Strong leadership focused on accelerating the cleanup, coupled with technical and administrative innovation, will be needed to reduce the federal government's third largest liability.

- **Develop a new approach that increases the level of private-sector responsibility for the disposal of nuclear waste.** Disposing of civilian nuclear waste is an important national issue that requires strong scientific study. According to an independent audit conducted by the public accounting firm of KPMG, the Nuclear Waste Fund holds $46 billion in payments by utilities and their ratepayers, plus interest, for a permanent waste disposal site for spent nuclear fuel and other nuclear waste.[14] The

licensing process for Yucca Mountain as a permanent repository for spent nuclear fuel is on hold. Without storage sites, spent nuclear fuel remains temporarily stored at nuclear plants. In addition to permanent storage, low-level nuclear waste facilities are needed.

New Policies: NNSA

The U.S. nuclear arsenal needs to be updated and reinvigorated if we are to be able to deal effectively with threats from China, Russia, and other adversaries. As a semi-autonomous agency, the NNSA has the primary responsibility for researching and designing new nuclear warheads and for ensuring that the existing nuclear arsenal is still potent. These efforts require significant funding and scientific know-how. In addition, NNSA develops and designs nuclear propulsion reactors for the U.S. Navy. NNSA also plays a role in preventing nuclear proliferation. With strong leadership by the Secretary of DESAS, the next Administration should:

- **Fund the design, development, and deployment of new nuclear warheads, including the production of plutonium pits in quantity.**[15]

- **Expand the U.S. Navy and develop new nuclear naval reactors to ensure that the Navy has the nuclear propulsion it needs to secure America's strategic interests.**

- **End ineffective and counterproductive nonproliferation activities like those involving Iran and the United Nations.**

Budget

DOE's total FY 2023 budget request (which does not include IIJA, IRA, and CHIPS and Science Act funding) was for $48,183,451,000.[16] Many DOE activities are required by various authorization and appropriations bills. To implement many of the policies contained in these proposals, several laws will need to be amended, including the Department of Energy Organization Act, IIJA, IRA, and possibly portions of the CHIPS (Creating Healthy Incentives to Produce Semiconductors) and Science Act.[17] Ending taxpayer subsidies will promote an "all of the above" energy policy, lead to more energy resources, reduce costs, and save taxpayers billions of dollars.

OFFICE OF CYBERSECURITY, ENERGY SECURITY, AND EMERGENCY RESPONSE (CESER)

Mission/Overview

CESER's mission is to "enhance the security and resilience of U.S. critical energy infrastructure to all hazards," to "mitigate the impacts of disruptive events and risk

to the sector overall through preparedness and innovation," and to "respond to and facilitate recovery from energy disruptions in collaboration with other Federal agencies, the private sector, and State, local, tribal, and territory governments."[18]

Needed Reforms

The threats to U.S. energy infrastructure are real and persistent, and CESER's role—working to support national security by working with the private sector to ensure energy security—is a proper one for government. Though CESER is properly focused on the threat to the grid from inverter-based resources like wind and solar, it needs to focus on the entire energy system, including the interdependence between natural gas and electric generation and cybersecurity. A good first step would be to reinstate an iteration of the Trump Administration's Executive Order 13920, "Securing the United States Bulk-Power System."[19] The Biden Administration also placed the Strategic Petroleum Reserves (SPR) and DOE's Federal Power Act 202(c) authority[20] under the CESER office, which should continue in the next Administration.

New Policies

CESER should be refocused to prioritize the cybersecurity, physical security, and resilience of critical infrastructure. Through research and development, technical assistance to states and industry, and emergency exercises, CESER can make a difference in our energy security posture.

Budget

CESER received $177 million for FY 2022 under the Energy and Water Development and Related Agencies Appropriations Bill, 2022,[21] and $550 million through the Infrastructure Investment and Jobs Act.[22] The FY 2023 budget request is for $202 million.[23] In addition, the White House has sent a letter to Congress requesting additional appropriations of $500 million to modernize the SPR.[24]

OFFICE OF ELECTRICITY (OE)

Mission/Overview

OE was created after the 2003 blackouts to improve grid reliability and energy assurance.[25] OE works to defend and promote the reliability and resiliency of the electric grid through power grid modeling and analytics, cyber resilience programs, and coordination with private-sector electricity providers. It also works to identify Defense Critical Electric Infrastructure.

Needed Reforms

- **Focus more intently on grid reliability.** There are significant cyber, physical, and reliability threats to the electric grid, and it is important

that a government agency with access to national security information develops data and plans to address threats to the grid and assist the private sector in securing it. Although OE does not stand out as a problematic office, additional focus and priority could be given to its original mission of working on grid reliability and resilience. OE could be combined with CESER (as well as what is left of the Grid Deployment Office if it is eliminated).

- **Eliminate applied programs.** OE administers grant programs for things like energy storage and the testing of grid-enhancing technologies (GETs). These programs should be eliminated. The next Administration should work with Congress to eliminate all DOE applied energy programs including OE (except perhaps those related to basic science for new energy technology).

New Policies

- **Prioritize grid security.** OE (along with CESER if they are combined) should focus on the security of critical infrastructure equipment used in the bulk power system as envisioned in President Trump's May 2020 Executive Order 13920 and a related December 2020 Prohibition Order,[26] which was revoked in April 2021 by President Biden.[27] In addition, CESER/OE should:

    1. Focus on the interdependence of and threats to electric generation and natural gas pipelines.

    2. Continue to focus on Defense Critical Electric Infrastructure.

    3. Work with FERC and the North American Electric Reliability Corporation (NERC) to ensure that there is sufficient dispatchable on-demand generation available to generate the electricity the grid needs when intermittent generation like wind and solar is not available.

- **End funding of programs for commercial technology and deployment.** The next Administration should work with Congress to eliminate nonessential funding of commercial technology and deployment. These activities can be conducted by the private sector.

Budget

OE's FY 2021 enacted budget was $211,720,000, and DOE has requested $297,386,000 for FY 2023.[28]

OFFICE OF NUCLEAR ENERGY (NE)

Mission/Overview

The Office of Nuclear Energy's "mission is to advance nuclear energy science and technology to meet U.S. energy, environmental, and economic needs." It has five stated goals: "Enable continued operation of existing U.S. nuclear reactors," "Enable deployment of advanced nuclear reactors," "Develop advanced nuclear fuel cycles," "Maintain U.S. leadership in nuclear energy technology," and "Enable a high-performing organization."[29] Under the Nuclear Waste Policy Act,[30] the Office of Nuclear Energy "has also been responsible for the DOE's statutory requirements to collect and dispose of spent nuclear fuel…since the Obama Administration's dissolution of the Office of Civilian Radioactive Waste Management."[31]

Needed Reforms

NE is too influential in driving the business decisions of commercial nuclear energy firms. Instead of focusing on a limited set of basic research and development activities that solve foundational technical issues that apply broadly to energy production, NE intervenes in nearly all aspects of the commercial nuclear energy industry. Absent wholesale reforms that restructure the federal energy and science bureaucracy to eliminate such functional energy offices, the next Administration should:

- **Substantially limit NE's size and scope.**

- **Adopt broader regulatory and energy policy reforms that reduce regulatory obstacles, allow all energy sources to compete fairly in the marketplace, and establish a predictable policy environment.** This will avoid unfair bias against the nuclear industry.

New Policies

NE should transition to a more limited scope of responsibilities that focuses on basic research, solving broadly applicable technology challenges, and solving the nuclear waste management issue as it relates to the development and deployment of advanced next-generation reactors, which can include small modular reactors (SMR). While respecting existing contractual obligations, NE should not initiate any new civilian reactor demonstration and commercialization projects. NE also should:

- **Focus on overcoming technical barriers that are preventing commercial reactor demonstration projects from moving forward.** Any activities in support of existing nuclear plants and any other projects

directed toward commercialization, including licensing support, should be shouldered by the private sector.

- **Reorganize its remaining activities into three basic lines of responsibility: nuclear fuels across the fuel cycle, reactor technology, and civilian radioactive waste.**

Budget

The above reforms would cost substantially less than the $1,675,060,000 requested for FY 2023.[32] Legislation such as the IIJA placed additional funding for new reactor demonstration projects outside of NE. These responsibilities and their associated funds should be moved to NE as appropriate. NE should not simply add or subtract programs, as some programs may help to support NE's new priorities. The better approach would be to build a new budget and program strategy that accounts for related DOE programs and submit a new budget request reflecting NE's new priorities.

OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT (FECM)

Mission/Overview

DOE is authorized by law to increase the conversion efficiency of all forms of fossil energy, reduce costs, improve environmental performance, and increase the energy security of the United States.[33] In recent years, the Office of Fossil Energy (FE) has been transformed from its statutory role of improving fossil energy production to one that is focused primarily on reducing the carbon dioxide emissions from fossil fuel extraction, transport, and combustion. This change is reflected in the office's new name, the Office of Fossil Energy and Carbon Management (FECM), effective as of July 2021, and FECM's mission: "to minimize the environmental impacts of fossil fuels while working towards net-zero emissions."[34]

Needed Reforms

- **Eliminate carbon capture utilization and storage (CCUS) programs.** Despite the recent expansion of the 45Q tax credit for carbon capture utilization and storage (CCUS) to $87 per ton, most carbon capture technology remains economically unviable, although private-sector innovations are on the horizon. CCUS programs should be left to the private sector to develop.[35] If the office continues any CCUS research, that research should be focused more on innovative utilization.

- **Pursue the processing of critical minerals.** Development of domestic critical material sources is important for national security, as the vast

majority of critical materials are mined or processed (or both) in Russia and China.[36] The processing of critical materials from fossil fuel waste products (primarily coal) has shown some potential and, in view of our vast domestic reserves of coal and abundant waste from coal mining and combustion, should be pursued.

New Policies

- **Eliminate FECM.** The next Administration should work with Congress to eliminate all of DOE's applied energy programs, including those in FECM (with the possible exception of those that are related to basic science for new energy technology). Taxpayer dollars should not be used to subsidize preferred businesses and energy resources, thereby distorting the market and undermining energy reliability.

- **Rename FECM (if it cannot be eliminated) under its original designation as the Office of Fossil Energy and with its original mission: increasing energy security and supply through fossil fuels.**

- **Focus on energy security and supply.** Absent elimination of FECM, Congress should direct FECM appropriations toward increasing energy security and supply. Congress has already directed these goals (including the reduction of costs).[37]

- **Ensure that LNG export approvals are reviewed and processed in a timely manner.** In particular:

    1. Ensure that LNG export applications are reviewed and approved expeditiously.

    2. Maintain the categorical exclusion from the National Environmental Policy Act (NEPA)[38] for LNG exports that was established by the Trump Administration[39] or (if it is revoked by the Biden Administration) reinstate it.

    3. Work with Congress to expand automatic approvals to include allies such as NATO as well as nations that have free trade agreements with the U.S.

- **Strategic Petroleum Reserve (SPR).** The Biden Administration moved responsibility for the SPR to CESER. Regardless of where the responsibility lies, the new DESAS should ensure that the SPR is maintained for national strategic purposes and not misused for political gain.

Budget

The FY 2023 budget request for FECM was approximately $893.2 million.[40] FECM's requested appropriation can be compared to the more than $4.0 billion requested for the Office of Energy Efficiency and Renewable Energy.[41] The disparity in funding demonstrates how DOE's research activities and substantial portions of its organizational structure are now focused entirely on the reduction of CO_2 emissions rather than energy access or energy security.

OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY (EERE)

Mission/Overview

The Office of Energy Efficiency and Renewable Energy traces its roots to the Energy Policy and Conservation Act of 1975,[42] but most of its programs today are rooted in the Energy Policy Act of 2005.[43] Under the Biden Administration, EERE's mission is "to accelerate the research, development, demonstration, and deployment of technologies and solutions to equitably transition America to net-zero greenhouse gas (GHG) emissions economy-wide by no later than 2050" and "ensure [that] the clean energy economy benefits all Americans."[44] The office is made up of three "pillars": energy efficiency, renewable energy, and sustainable transportation.

Needed Reforms

- **End the focus on climate change and green subsidies.** Under the Biden Administration, EERE is a conduit for taxpayer dollars to fund progressive policies, including decarbonization of the economy and renewable resources. EERE has focused on reducing carbon dioxide emissions to the exclusion of other statutorily defined requirements such as energy security and cost. For example, EERE's five programmatic priorities during the Biden Administration are all focused on decarbonization of the electricity sector, the industrial sector, transportation, buildings, and the agricultural sector.[45]

- **Eliminate energy efficiency standards for appliances.** Pursuant to the Energy Policy and Conservation Act of 1975 as amended, the agency is required to set and periodically tighten energy and/or water efficiency standards for nearly all kinds of commercial and household appliances, including air conditioners, furnaces, water heaters, stoves, clothes washers and dryers, refrigerators, dishwashers, light bulbs, and showerheads. Current law and regulations reduce consumer choice, drive up costs for consumer appliances, and emphasize energy efficiency to the exclusion of other important factors such as cycle time and reparability.

New Policies

- **Eliminate EERE.** The next Administration should work with Congress to eliminate all of DOE's applied energy programs, including those in EERE (with the possible exception of those that are related to basic science for new energy technology). Taxpayer dollars should not be used to subsidize preferred businesses and energy resources, thereby distorting the market and undermining energy reliability.

- **Reduce EERE funding.** If EERE cannot be eliminated, then the Administration should engage with Congress and the House and Senate Appropriations Committees on EERE's budget. EERE's budget was around $1.5 billion a year when the advances were made that led to dramatic cost decreases in wind, solar, and battery technology. In recent years, Congress has appropriated many billions of dollars in excess of EERE's normal budget (DOE requested more than $4.0 billion for FY 2023).[46] It should rescind these excess monies so that DOE is not required to spend them. If funding cannot be reduced, then it should be reallocated to more fundamental research and less toward commercialization and deployment.

- **Focus on fundamental science and research.** If EERE cannot be eliminated, then the Administration should focus on broader and more fundamental energy research, consistent with law. The Biden Administration is too focused on deploying technologies instead of relying on the private sector. Moreover, under the Biden Administration, EERE is too focused on decarbonization and not at all on the cost of energy.

- **Eliminate energy efficiency standards for appliances.** The next Administration should work with Congress to modify or repeal the law mandating energy efficiency standards. Before (or in lieu of) repealing the law, there are steps the agency can take to refocus on the consumer by giving full force to the provisions already in the law that serve to limit regulatory overreach and protect against excessively stringent standards. For example, the Trump DOE prioritized the relatively few appliance regulations that were likely to save consumers the most energy and refrained from those whose modest benefits are unlikely to justify the costs. It also took steps to ensure that any new standards do not compromise product quality or eliminate any features. These and other consumer protections are in the statute but have often been ignored.

Budget

EERE was funded at slightly more than $2.8 billion in FY 2021, and DOE requested slightly more than $4.0 billion for FY 2023.[47] Congress needs to rescind the appropriated monies that EERE has not spent and begin fresh with new appropriations.

GRID DEPLOYMENT OFFICE (GDO)

Mission/Overview

The Grid Deployment Office was established to implement parts of the Infrastructure Investment and Jobs Act. Pursuant to the IIJA, GDO administers funds appropriated by Congress to support transmission expansion and low/zero carbon resources. In addition, GDO is developing studies of the electric grid to address congestion, enhance reliability and resilience, and promote "clean" energy.[48]

Needed Reforms

- **End grid planning and focus instead on reliability.** FERC and NERC have the primary responsibility for addressing reliability, states have the primary authority to site and permit transmission lines, and regional transmission organizations assist in planning regional transmission needs for parts of the country, but Congress granted some grid planning and siting authority to FERC and DOE through the Energy Policy Act of 2005 and IIJA, as well as grid funding through the Inflation Reduction Act. Instead of focusing on grid expansion for the benefit of renewable resources or supporting low/carbon generation, GDO should be incorporated into the reformed Office of Cybersecurity, Energy Security, and Emergency Response, which would work to enhance the grid's reliability and resilience. To the extent that they remain in effect, the funding programs that GDO oversees and administers should emphasize grid reliability, not renewables expansion.

- **Consider whether to defund the civil nuclear tax credit program and hydroelectric power efficiency and production incentives established in the IIJA and administered through GDO.** If subsidies for renewable resources are not repealed, it may be necessary to continue subsidies for nuclear and hydro to ensure grid reliability.

New Policies

- **Eliminate GDO and assign necessary activities to the reformed CESER.** It appears that GDO's current purpose is to promote the integration of low/zero carbon resources onto the grid by supporting subsidies for such resources and building new transmission facilities at

a cost that poses a barrier to renewable generation expansion. However, some of the grants that it administers under the IIJA appear to be properly focused on enhancing the reliability and security of the electric grid. They should be reassigned to the reformed and expanded CESER.

- **End DOE/GDO's role in grid planning for the benefit of renewable developers.** Under the Energy Policy Act of 2005 and IIJA, DOE is to perform grid congestion studies and has authority to identify National Interest Electric Transmission Corridors (NIETC). Under the Biden Administration, GDO is working on a National Transmission Planning Study and is administering $2.5 billion to support "nationally significant transmission lines, increase resilience by connecting regions of the country, and improve access to cheaper clean energy sources."[49]

- **Defund most GDO programs.** GDO oversees nearly $20 billion in new appropriations created by the IIJA, including a grid modernization grant program, the transmission facilitation program, and the civil nuclear credit program, among others. Congress should rescind any money not already spent.

Budget

Congress appropriated $10 million for GDO in FY 2021, and DOE has requested $90.2 million for FY 2023.[50]

OFFICE OF CLEAN ENERGY DEMONSTRATION (OCED)

Mission/Overview

The OCED was established in December 2021 to implement the IIJA. Its mission is "[to] deliver clean energy demonstration projects at scale in partnership with the private sector to accelerate deployment, market adoption, and the equitable transition to a decarbonized energy system."[51]

Needed Reforms

- **End market distortions and stop shifting technology and development risks to taxpayers.** The OCED is distorting energy markets and shifting the risk of new technology deployment from the private sector to taxpayers. The IIJA provided more than $20 billion in government subsidies to help the private sector deploy and market clean energy and decarbonizing resources. Government should not be picking winners and losers and should not be subsidizing the private sector to bring resources to market.

New Policies

- **Eliminate OCED.** The next Administration should work with Congress to eliminate all DOE energy demonstration programs, including those in OCED. Taxpayer dollars should not be used to subsidize preferred businesses and energy resources, thereby distorting the market and undermining energy reliability.

- **Refocus on resources that will support reliability.** To the extent that the various energy research and development funding authorities cannot be repealed, funded projects should be consistent with the programmatic goals of the next Administration. For example, the already awarded Advanced Reactor Demonstration Program should help to move SMRs from pilot scale to commercialization and in the process address material, fuel, and regulatory issues that would pose deployment risk to utilities and Wall Street.

Budget

DOE's FY 2023 budget request includes $214 million "to initiate a new $150 million competition to support demonstrations that address integration issues of renewable energy into the U.S. transmission and distribution grids."[52] Overall, the "$21.5 billion provided by the Bipartisan Infrastructure Law"[53] supports several OCED programs:

- Advanced Reactor Demonstration Projects ($2.5 billion).

- Carbon Capture Large-Scale Pilot Projects ($937 million).

- Carbon Capture Demonstration Projects Program ($2.5 billion).

- Clean Energy Demonstration Program on Current and Former Mine Land ($500 million).

- Energy Improvements in Rural or Remote Areas ($1 billion).

- Industrial Demonstrations Program ($6.3 billion).

- Long Duration Energy Storage Demonstrations ($505 million).

- Regional Clean Energy Hubs ($8 billion).

- Regional Direct Air Capture Hubs ($3.5 billion).[54]

Personnel

By drawing resources from across the DOE, the OCED has already grown to 70 personnel in six months. If OCED is eliminated, those positions can be eliminated. If OCED is reduced, its personnel can be reduced to fit its scope.

LOAN PROGRAM OFFICE (LPO)

Mission/Overview

"LPO's mission is to finance next-generation U.S. energy infrastructure," serve "as a bridge to bankability for breakthrough projects and technologies," and "de-risk[] them at early stages of investment so they can be developed at commercial scale and achieve market acceptance."[55] The Biden Administration directed the program to subsidize the Administration's "net zero" energy transition away from conventional fuels by 2050 and to promote union jobs and domestic supply chains.[56]

The LPO coordinates with the U.S. Treasury Federal Financing Bank and is organized into seven divisions: Outreach and Business Development, Origination, Portfolio Management, Risk Management, Technical and Project Management, Legal, and Management and Operation. Its loan programs were originally designed as temporary programs but have since been amended and expanded. Specifically:

> The IRA expanded the authority in [LPO's] existing programs, **1703**, **ATVM**, and **Tribal Energy Finance**, by **$100B**. IRA also created the **Energy Infrastructure Reinvestment (EIR) Financing Program (1706)** which can support up to $250B in loan authority. The **CO2 Infrastructure Finance and Innovation Act (CIFIA)**—authorized by the [bipartisan infrastructure law], appropriates $2.1B to support ***approximately $25B in flexible, low-interest loans***. This new legislation will create jobs and wealth, address environmental justice and equity priorities and strengthen our energy security and supply chains.[57]

Needed Reforms

Taxpayers should not be backing risky business ventures or politically preferred commercial enterprises. To save tax dollars and reduce current risk, the new Administration:

- **Should not back any new loans or loan guarantees.**
- **Should seek to sunset DOE's loan authority through Congress and eventually eliminate the Loan Program Office.**

DOE-backed loans and loan guarantees put taxpayers at undue risk, distort private-sector investment decisions, shift private money toward projects with political support, and create additional barriers to entry for companies that are outside of the government's definition of "innovative" or for companies that choose not to participate.

New Policies

To the extent that DOE loan programs cannot be repealed, the new Administration should:

- **Strengthen due diligence and increase transparency in DOE loan programs.**
- **Limit the use of new loan or loan guarantee authority to projects that will promote the reliability and resilience of the electric grid and other energy infrastructure and support national security objectives.**
- **Establish clear mandatory qualifications requiring applicants to comply with the Uyghur Forced Labor Prevention Act58 and to certify that they are not financed with any other local, state, or federal taxpayer-backed loan, loan guarantee, or bond (such as a state "green bank").**

ADVANCED RESEARCH PROJECTS AGENCY–ENERGY (ARPA–E)

Mission/Overview

ARPA–E was created in 2007 as part of the America Competes (Creating Opportunities to Meaningfully Promote Excellence in Technology Education) Act.[59] Its statutory goals are "to enhance the economic and energy security of the United States through the development of energy technologies" that reduce "imports of energy from foreign sources;" reduce "energy-related emissions, including greenhouse gases;" improve "the energy efficiency of all economic sectors;" and "ensure that the United States maintains a technological lead in developing and deploying advanced energy technologies."[60]

Some in Congress see ARPA–E as beneficial because the COMPETES Act provides it with more bureaucratic flexibility than other federal programs are allowed. Its goals are essentially the same as those of DOE's applied energy offices, but its structure is different, and it is focused around individual programs instead of around offices with longer-term agendas.

Needed Reforms

- **Stop risking taxpayer dollars as venture capital for the private sector.** ARPA–E tends to see its mission as bringing technology from idea to commercialization. Often called the investment trough, ARPA–E is effectively funding projects that the private sector is unwilling to fund. Taxpayers should not in effect be picking winners and losers—and having their dollars at risk but not gaining the economic rewards of success.

- **End duplicative efforts.** Another problem is that ARPA–E's mission is similar to the missions of DOE's applied energy offices. If DOE's applied energy offices are doing their jobs correctly, they will use Funding Opportunities Announcements, prizes, lab calls, and other funding mechanisms that are needed to accomplish a specific goal. In other words, ARPA–E is at best duplicating the work done by other DOE offices.

New Policies

- **Eliminate ARPA-E.** The next Administration should work with Congress to eliminate ARPA–E. The agency is unnecessary, risks taxpayer dollars, and interferes with risk-benefit decisions that should be made by the private sector.

Budget

Congress appropriated $427 million for ARPA–E in FY 2021, and slightly more than $700 million has been requested for FY 2023.[61]

FEDERAL ENERGY MANAGEMENT PROGRAM (FEMP)

Mission/Overview

The Federal Energy Management Program (FEMP) describes its mission as working with "other federal agencies to meet energy-related goals, identify affordable solutions, facilitate public–private partnerships, and provide energy leadership to the country by identifying government best practices."[62] Congress has created a number of energy and energy efficiency requirements and guidelines for federal agencies,[63] and FEMP works with those agencies to help them meet their congressionally mandated goals.

Needed Reforms

As the world's largest single energy consumer, the federal government should use energy efficiently and cost-effectively—especially because the taxpayer is paying the energy bills. The Obama Administration required the federal government to set extrastatutory and aggressive goals regarding the use of renewable

energy. The Trump Administration took a less aggressive approach in Executive Order 13834, which specified that "each agency shall prioritize actions that reduce waste, cut costs, enhance the resilience of Federal infrastructure and operations, and enable more effective accomplishment of its mission."[64]

New Policies

A conservative Administration should follow the language of Executive Order 13834 and direct federal agencies to "reduce waste, cut costs, enhance the resilience of Federal infrastructure and operations, and enable more effective accomplishment of its mission." For FEMP, this means focusing on helping federal agencies to follow the law and use energy efficiently and cost-effectively.

Budget

FEMP was funded at $40 million in FY 2022,[65] and slightly less than $170 million is requested for FY 2023.[66] If it is focused on helping the federal government to carry out its statutorily based energy goal, much less money is needed.

CLEAN ENERGY CORPS

Mission/Overview

Under the IIJA, "the Clean Energy Corps is charged with investing more than $62 billion to deliver a more equitable clean energy future for the American people[.]"[67] The Corps says that it will "focus on deploying next generation clean energy technology" to "help America meet its goals of a carbon-free power sector in 2035 and a decarbonized economy in 2050."[68]

Needed Reforms

The Clean Energy Corps is a taxpayer-funded program to create new government jobs for employees "who will work together to research, develop, demonstrate, and deploy solutions to climate change." DOE anticipates recruiting "an additional 1,000 employees using a special hiring authority included in the Bipartisan Infrastructure Law."[69] Taxpayers should not have to fund a cadre of federal employees to promote a partisan political agenda.

New Policies

Eliminate the Clean Energy Corps by revoking funding and eliminating all positions and personnel hired under the program.

Budget

Funding for Clean Energy Corps employees is not clearly defined in the FY 2023 DOE budget request.

ENERGY INFORMATION ADMINISTRATION (EIA)

Mission/Overview

The U.S. Energy Information Administration "collects, analyzes, and disseminates independent and impartial energy information to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment."[70]

Needed Reforms

EIA is not an inherently problematic agency and historically has provided independent and impartial analysis. Requests for EIA analyses can be made by the Administration or from Members of Congress or congressional committees. EIA needs to be committed to providing unbiased forecasting and data so that policymakers, industry, and the public can have a clear understanding of our energy resources and energy economy. Strong leadership will be needed to ensure that data and reporting are not misused to promote a politicized "energy transition."

New Policies

- **Clarify levelized cost of electricity.** "Levelized cost of electricity (LCOE) refers to the estimated revenue required to build and operate a generator over a specified cost recovery period."[71] It is used in the National Energy Modeling System (NEMS) to compare the cost of technologies to determine which technologies are expected to be constructed in the future. Although it is useful in comparing the costs of resources over time, LCOE can also mask the massive amounts of capital needed to deploy new generation. Moreover, in the case of intermittent resources such as wind and solar, LCOE does not include the cost for backup or firming power from dispatchable resources. EIA should ensure that its reporting provides an accurate assessment of generation costs. The cost of backup power for when wind and solar resources are not available should be included when comparing the technologies and reported as a separate component in the modeling documents.

- **Revise reserve margins.** EIA, in conjunction with FERC, NERC, regional transmission organizations (RTOs), and the electric industry, should change how electric grid reserve margins are defined and calculated. In the past, reserve margins have looked at the amount of nameplate capacity on the grid to serve peak load plus a reserve. With the increasing number of intermittent, nondispatchable resources like wind and solar, peak load and reserve margins need to be reevaluated. Reserve margins need to be timed to load changes throughout the day and consider the availability of dispatchable on-demand resources to meet load when renewables may not be available.

- **Update reports on the impacts of federal financial interventions and subsidies.** EIA's most recent report on federal financial interventions and subsidies was issued in April 2018.[72] This is an important analysis because it clearly shows the level of the federal government's intervention in each area of the energy system for a given fiscal year. In the past, EIA performed the analysis pursuant to a request from Congress or the Administration. This report should become a project that is performed annually or every other year as part of EIA's base program.

- **Ensure the objectivity of the *International Energy Outlook (IEO)*.** In the past, EIA published the *IEO* every year. It is now published every two years. *IEO* forecasts are important because the International Energy Agency's forecasts in its annual *World Energy Outlook* are becoming unrealistic and politically oriented to push Europe's climate goals. EIA forecasts should be based on current laws and regulations and should not be used to promote favored policies.

- **Assess the case for privatization.** There are some who think that EIA should be privatized. The cost savings to taxpayers should be considered. On the other hand, EIA has generally demonstrated neutral data presentation that is helpful to policymakers and the private sector.

Budget

Congress appropriated $126.8 million for EIA in FY 2021, and the FY 2023 budget request is for approximately $144.5 million.[73]

OFFICE OF INTERNATIONAL AFFAIRS (IA)

Mission/Overview

"The Office of International Affairs has primary responsibility for addressing international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy affecting the United States."[74] It "focuses on enhancing global energy security through countering malign influence, diversifying supplies, and increasing energy access" and "is committed to increasing U.S. energy exports and trade to enhance growth."[75]

Needed Reforms

- **Expand IA's role and focus its activities on U.S. international energy security interests.** International energy activities should be consolidated under IA (and the Department of State's Bureau of Energy Resources should be eliminated) to ensure a proper understanding of domestic energy

policy and how it affects foreign policy, as well as the international energy landscape and how it affects U.S. national and economic security.

- **Develop a strategy for identifying and accessing resources and advancing U.S. economic interests.** America has recently become a net energy exporter, but it still imports large amounts of essential energy resources such as oil and natural gas as well as such materials as uranium (including yellowcake), lithium, certain rare earth minerals, and energy generation and transmission components and technology. The United States needs a clear understanding of its global energy and economic interests and a strategy for protecting them.

- **Oppose "climate reparations."** During the November 2022 United Nations climate conference in Egypt, the Biden Administration and other "developed" countries agreed to provide "climate reparations" to developing countries for the harm allegedly caused by the developed countries' use of fossil fuel.[76] A reparations slush fund administered by a non-U.S. organization provides no assurance that U.S. interests will be protected and should not be supported in any form.

New Policies

- **Identify U.S. energy security interests and promote American energy dominance.** To this end, IA should work closely with the DESAS Office of Policy on the National Energy Security Strategy.

- **Strengthen the new DESAS vis-à-vis the Department of State.** The State Department's Bureau of Energy Resources has generally excluded IA from serious discussions of international affairs to the detriment of DOE and broader interagency policy development. In addition, DOE embassy representatives are generally excluded from giving policy advice to senior diplomats and are used merely as sources of information instead of being active advocates for the Secretary's priorities. The Secretary of Energy is a senior member of the President's National Security Council and should function as such. The DOE's Deputy Secretaries, Under Secretaries, and Assistant Secretaries should be guaranteed representation at all Deputies and Policy Coordination Committee meetings. In addition, senior political and career staff should hold positions on the NSC staff equivalent to their counterparts at State, Defense, Treasury, and the Intelligence Community (IC). DESAS billets should replace State Department Bureau of Energy Resources billets at the relevant posts worldwide.

- **Stop "climate reparations."** The President should refuse to provide climate reparations under an unratified treaty, and IA should encourage other countries to reconsider their desire to provide reparations.

ARCTIC ENERGY OFFICE (AE)

Mission/Overview

AE was established during the Trump Administration to create a central office overseeing U.S. Arctic interests in Alaska and the other Arctic nations in response to the growing strategic sensitivity of this geographic region and the natural resources it contains. It "serves as the principal advisor to the Under Secretary on all domestic Arctic issues, including energy, science, and national security."[77]

Needed Reforms

In October 2022, the Biden Administration released its National Strategy for the Arctic Region.[78] Although recognizing national security threats in the Arctic, it also focuses heavily on climate change, sustainability, and international cooperation. The United States must establish a strategic plan to promote its national security, energy, and economic interests in the Arctic. An analysis and plan to support the responsible development of Alaska's energy assets should be a priority.

New Policies

- **Defend American interests in the Arctic Circle.** The next Administration needs to define American strategic and economic interests in the Arctic Circle. AE should help to identify those interests, as well as threats posed by countries like Russia and China, and develop appropriate policy options for the President's consideration.

- **Ensure that AE is clearly focused.** In particular, this means identifying U.S. energy interests in the Arctic Circle, identifying foreign government and commercial interests and activity in the region, and ensuring that the United States does not forgo important energy and national security interests in the Arctic.

- **Expand AE's operations in Alaska.** AE's operations in Alaska should be expanded to encompass broader national energy security interests in the region including rare earths, oil, and natural gas. AE should also be the lead for DOE Antarctic operations as a counter to growing Russian and Chinese interest in Antarctic resources.

Personnel

AE should provide a senior Arctic Energy official to the U.S. Arctic Council delegation in recognition of the key role that energy plays in Arctic development.

OFFICE OF INTELLIGENCE AND COUNTERINTELLIGENCE (IAC)

Mission/Overview

DOE's Office of Intelligence and Counterintelligence "is responsible for all intelligence and counterintelligence activities throughout the DOE complex, including nearly thirty intelligence and counterintelligence offices nationwide." It "leverage[s] the Energy Department's unmatched scientific and technological expertise in support of policymakers as well as national security missions in defense, homeland security, cyber security, intelligence, and energy security" and "is a member of the U.S. Intelligence Community."[79]

Needed Reforms

Robust security protocols are necessary to protect DOE technology and innovations from foreign penetration and espionage. In addition, DOE's general isolation from the rest of the Intelligence Community prevents appropriately cleared senior staff from getting the thorough issue briefings that their colleagues elsewhere in the national security realm receive.

New Policies

- **Improve accountability and utilization.** IAC should be led by a qualified appointee and report directly to the Secretary and Deputy Secretary. IAC will require strong political leadership, which means finding an appointee with an IC background. In addition, upgrading the new DESAS's general security posture would require the Secretary's direct intervention to improve protocols and access the necessary resources from the rest of the IC. This would not be achievable at a lower level.

OFFICE OF POLICY (OP)

Mission/Overview

OP has taken various roles over different Administrations. During the Obama Administration, OP was a large office and was tasked with drafting the Quadrennial Energy Review (QER). The Trump Administration shut down the QER and gave OP a leaner research and advisory role. Under the Biden DOE, OP appears to be focused on preparing reports on climate change and renewables.[80]

Needed Reforms

- **Help to develop policy.** Because the appointees running DOE's various program offices are properly focused on managing their programs, not enough thought is given to identifying future challenges and developing potential solutions to benefit the American people.

- **Help to ensure that policies are properly implemented.** Policy initiatives from the Secretary are often understood or implemented inconsistently by program offices. OP can help the Secretary to ensure that important policy initiatives are implemented, particularly when they involve multiple program offices.

New Policies

- **Develop a National Energy Security Strategy.** OP could be tasked with developing a National Energy Security Strategy for the Secretary. This strategy could be prepared in conjunction with the White House National Security Strategy and the DOD National Defense Strategy to convey these priorities to Congress and design policy initiatives for their implementation. Such a strategy could summarize cyber and physical threats to energy infrastructure, challenges involved in obtaining rare earth minerals to support domestic energy production and consumption, and foreign actions that threaten U.S. energy security and dominance. However, it would be important to guard against attempts to transform the strategy into a government-led industrial policy or, in a progressive Administration, an economy-wide climate policy.

OFFICE OF TECHNOLOGY TRANSITIONS (OTT)

Mission/Overview

The Secretary of Energy authorized the creation of this office in 2015. Its mission "is to expand the public impact of the department's research, development, demonstration, and deployment (RDD&D) portfolio to advance the economic, energy and national security interests of the nation." OTT serves as "the front door to U.S. Department of Energy's...products, facilities and expertise" and "integrates 'market pull' into its planning to ensure the greatest return on investment from DOE's RDD&D activities to the taxpayer."[81]

Needed Reforms

OTT should ensure that the best emerging technologies from DOE and the National Labs are properly supported and protected. Because America's technological edge is a key national security asset, and in view of China's predatory thefts of intellectual property, OTT should:

- **Ensure that R&D funds are used for projects that protect and advance that edge.**

- **Ensure that successful advances, with a focus on new natural resource development technologies, artificial intelligence, cybersecurity, and space, are transferred swiftly to American interests in the private sector.**

New Policies

- **Focus on benefits to Americans.** OTT's operations should be based on the recognition that the new technologies generated by American taxpayers' investment in DOE are a significant national security asset rather than some neutral scientific gift to humanity.

- **Increase oversight and coordination.** OTT needs to be vigilant in overseeing and coordinating OTT offices associated with each National Lab. For security and economic espionage reasons, the work funded by the American people needs to be protected, and when commercialized, it needs to go to American businesses.

OFFICE OF SCIENCE (SC)

Mission/Overview

The Office of Science (SC) supports and oversees research facilities and programs that cover basic science through its application to the demonstration and deployment of energy technologies. SC oversees 10 of the 17 DOE National Labs and 28 major federal research user facilities. Its mission is to preserve U.S. leadership in science, fund and perform basic research, and provide the scientific facilities that the private sector is unable or unwilling to provide. New initiatives include quantum information sciences and artificial intelligence. SC is led by a Senate-confirmed Director at the Assistant Secretary level and has eight program offices.[82]

Needed Reforms

The next conservative President should commit the United States to scientific dominance to support national and economic security, especially in light of similar efforts by China. To aid in this effort, the Office of Science should:

- **Return to its primary mission: nonpartisan and basic science.** SC's mission should be international leadership in basic and early applied science and provision of world-leading facilities for this work. The Infrastructure Investment and Jobs Act and Inflation Reduction Act mark the major

reorientation of DOE primarily from defense applications in the NNSA and basic and early applied science across SC and the applied offices to a massive federal research, development, demonstration, and commercialization body.[83] Distraction from SC's basic science mission should be prevented.

- **Increase the level of accountability.** The National Laboratories need to be more directly accountable to the Secretary of Energy and Congress for their work and management.

New Policies

- **Commit to U.S. science dominance.** The United States is losing its dominance in scientific discoveries and technological development. China and other adversaries have been stealing American science and technology for years and are now on the verge of dominating science—a development that is fraught with negative strategic and economic implications for the United States. The next Administration must commit itself to ensuring that the U.S. continues to dominate scientific discovery and technological advancement.

- **Refocus on mission and eliminate duplication and waste.** The Administration should work with Congress to rationalize the National Lab network to meet specific national objectives (such as the NNSA laboratories' role in national defense) and conduct basic research that the private sector would not otherwise conduct. Activities that duplicate those of other government agencies or the private sector should be eliminated.

- **Properly manage the National Labs' contributions to the private sector.** SC should improve private-sector access to the National Labs, through programs like the GAIN voucher program and consistent with national security considerations, while ensuring that the economic benefits of taxpayer-funded technologies flow back to taxpayers through patent-review sharing or a revolving fund.

Budget

The Office of Science was appropriated slightly more than $7 billion in FY 2021, and DOE requested slightly less than $7.8 billion for FY 2023.[84]

OFFICE OF ENVIRONMENTAL MANAGEMENT (EM)

Mission/Overview

The Office of Environmental Management's mission is to "complete the safe cleanup of [the] environmental legacy resulting from decades of nuclear

weapons development and government-sponsored nuclear energy research."[85] Its cleanup program is the world's largest, and EM reports that 92 (of 107) sites have been completed.[86]

According to the U.S. Government Accountability Office, "DOE is responsible for the largest share of the federal government's environmental liability—about 85 percent in fiscal year 2020."[87] Since 2011, EM has spent a cumulative total of $63.2 billion, and its liability has grown by $243 billion.[88] It is currently projected that cleanup will take another 70 years (FY 2022 to FY 2091).[89] Projected "Low Range" and "High Range" lifecycle costs total slightly less than $652.4 billion and slightly more than $887.2 billion, respectively.[90]

Needed Reforms

Some states (and contractors), see EM as a jobs program and have little interest in accelerating the cleanup. EM needs to move to an expeditious program with targets for cleanup of sites. The Hanford site in Washington State is a particular challenge. The Tri-Party Agreement (TPA) among DOE, the Environmental Protection Agency, and Washington State's Department of Ecology has hampered attempts to accelerate and innovate the cleanup. A central challenge at Hanford is the classification of radioactive waste. High-Level Waste (HLW) and Low-Level Waste (LLW) classifications drive the remediation and disposal process. Under President Trump, significant changes in waste classification from HLW to LLW enabled significant progress on remediation. Implementation needs to continue across the complex, particularly at Hanford.

New Policies

The next Administration should:

- **Accelerate the cleanup.** This means that a comprehensive cost projection and schedule reflecting the entire scope of the job should be developed and appropriate reforms should be instituted. To save taxpayers a potential $500 billion over the long run and reduce current risk, a 10-year program to complete all sites by 2035 (except Hanford with a target date of 2060) should be considered. Such a commitment will require increased funding for EM during those accelerated periods. To the extent that funding from the IIJA and IRA cannot be repealed, requests to divert those funds to EM's cleanup obligations should be considered.

- **Fully implement High-Level Waste determination.** Fully adopting the High-Level Waste (HLW) determination across the DOE complex, particularly at Hanford, would allow LLW to be grouted rather than vitrified.

- **Increase the use of commercial waste disposal.** Using commercial disposal would reduce capital costs (~ $2 billion) for new disposal sites to accelerate cleanup and reduce local post-cleanup environmental liability at multiple sites.

- **Revisit the Hanford cleanup's regulatory framework.** Hanford poses significant political and legal challenges with the State of Washington, and DOE will have to work with Congress to make progress in accelerating cleanup at that site. DOE and EPA need to work more closely to coordinate their responses to claims made under the TPA and work more aggressively for changes, including congressional action if necessary, to achieve workable cleanup goals.

- **Establish more direct leadership and accountability to the Deputy Secretary consistent with Government Accountability Office recommendations.**[91]

- **Change Environmental Management's culture to promote innovation and completion.**

Budget

Environmental Management received slightly less than $7.6 billion in FY 2021, and its budget request for FY 2023 is approximately $8.06 billion.[92] The additional funding necessary to accelerate closure of the program will need to be considered as part of a broader government-wide discussion about yearly appropriations.

OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT (OCRWM) (CURRENTLY OFFICE OF SPENT FUEL AND WASTE DISPOSITION)

Mission/Overview

The Nuclear Waste Policy Act (NWPA) of 1982 conferred the responsibility for commercial nuclear waste disposal on the federal government,[93] and in 2002, Congress designated a single repository located at Yucca Mountain in Nevada as the national repository site. The act also established the Office of Civilian Radioactive Waste Management (OCRWM).[94] The Obama Administration shut down OCRWM in 2010. The Office of Spent Fuel and Waste Disposition, which is headed by a non-confirmed Deputy Assistant Secretary in the Office of Nuclear Energy, is currently responsible for the management of nuclear waste, and interim disposal is taking place on various sites. Providing a plan for the proper disposal of civilian nuclear waste is essential to the promotion of nuclear power in the United States.

Needed Reforms

- **Work with the Nuclear Regulatory Commission as it reviews DOE's permit application for Yucca Mountain.** According to both the scientific community and global experience, deep geologic storage is critical to any plan for the proper disposal of more than 75 years of defense waste and 80,000 tons of commercial spent nuclear fuel.[95] Yucca Mountain remains a viable option for waste management, and DOE should recommit to working with the Nuclear Regulatory Commission as it reviews DOE's permit application for a repository. Finishing the review does not mean that Yucca Mountain will be completed and operational; it merely presents all the information for the State of Nevada, Congress, the nuclear industry, and the Administration to use as the basis for informed decisions.

- **Reform the licensing process.** The reactor licensing process is inadequate. Fixing nuclear waste management will require wholesale reform that realigns responsibilities, resets incentives, and introduces market forces without creating chaos within the current nuclear industry that has been built around the current system.

- **Produce concrete outcomes from consent-based siting.** Beginning in the Obama Administration and resurrected during the Biden Administration, consent-based siting for a civilian waste nuclear repository has been a way to delay any politically painful decisions about siting a permanent civilian nuclear waste facility. In 2022, DOE announced $16 million to support local communities in consent-based siting.[96] The next Administration should use the consent-based-siting process to identify and build temporary or permanent sites for a civilian waste nuclear repository (or repositories).

New Policies

- **Restart Yucca Mountain licensing.** DOE should restart the Yucca Mountain licensing process. Any continuation of interim storage facilities should be made part of an integrated waste management system that includes geologic storage. Further, building on the consent-based siting process already underway, DOE should find a second repository site.

- **Fix the policy and cost drivers that are preventing nuclear storage.** The federal government continues to hold $46 billion[97] in the Nuclear Waste Fund (NWF),[98] funded by utilities and their ratepayers for permanent disposal of nuclear waste. However, no such storage exists, and spent nuclear fuel remains on site at most nuclear plants. Meanwhile, Congress uses those funds to finance unrelated spending. Moreover, DOE's

violation of its contractual obligation to take the waste has resulted in the payment of "approximately $10.1 billion in settlements and judgments to contract holders."[99]

- **Develop new NWF funding and accounting mechanisms that allow licensed nuclear operators to guarantee resources for future nuclear waste disposal while also maintaining control of those resources.**

- **Reconstitute OCRWM.** OCRWM, as already established by statute, should be tasked with developing the next steps on Yucca Mountain and nuclear waste management. These steps should include initiating market reforms, including significant amendments to the NWPA, to allow additional industry responsibility for managing waste, market pricing and competition for waste services, and the opportunity for Nevadans to have more partnership involvement with any nuclear facility at Yucca Mountain.

- **Reestablish, consistent with the Nuclear Waste Policy Act, the position of Director of the Office of Civilian Radioactive Waste Management.**

Budget

Within the Office of Nuclear Energy budget, approximately $100 million is set aside for fuel cycle and waste management activities.[100] These funds should be transferred to the newly established OCRWM, which should also be responsible for managing the Nuclear Waste Fund and given access to the fund as necessary to carry out its responsibilities.

NATIONAL NUCLEAR SECURITY ADMINISTRATION (NNSA)

Mission/Overview

NNSA's primary mission is to provide and maintain a modern, safe, and effective nuclear deterrent for the United States. This includes the design and production of nuclear warheads, their integration with delivery systems, and their safe storage and decommissioning. NNSA's responsibilities also include developing nuclear reactors for the U.S. Navy and "work[ing] to prevent nuclear weapon proliferation and reduce the threat of nuclear and radiological terrorism around the world."[101] NNSA was established by the NNSA Act, which also defines its authority.[102]

Needed Reforms

The United States, through the NNSA, needs to make the design, development, and deployment of new nuclear warheads a top priority. Existing warheads were

designed and built during the Cold War, and the U.S. lacks sufficient plutonium production capabilities.[103] Because this process will take time, NNSA and the NNSA Labs need to ensure that existing nuclear warheads are viable and provide an appropriate strategic deterrent.

New Policies

The expansion of Chinese nuclear forces, the continued nuclear threat from Russia, and active nuclear programs in North Korea, Iran, and elsewhere require NNSA's recommitment to the nuclear mission. A conservative Administration should:

- **Continue to develop new warheads for each branch of the triad (land, sea, and air defenses).** If possible, reverse the Biden Administration's decision to retire the B83 bomb (in order to maintain two aircraft-delivered warheads) and its decision to cancel the submarine-launched cruise missile (SLCM).[104] Also undertake an evaluation of the need for nuclear antisubmarine and air defense weapons in light of emerging threats.

- **Maintain two production sites for plutonium pits (a key element of warhead production) at Los Alamos and Savannah River.**[105]

- **Reject ratification of the Comprehensive Test Ban Treaty and indicate a willingness to conduct nuclear tests in response to adversary nuclear developments if necessary.** This will require that NNSA be directed to move to immediate test readiness to give the Administration maximum flexibility in responding to adversary actions.

- **Review all new Navy, Department of Homeland Security, and U.S. Department of Transportation Maritime Administration construction programs.** The review should be conducted by the Director of Naval Reactors (DNR) with an eye to the possible inclusion of advanced affordable nuclear reactor technology and extension of DNR authority over these agencies' nuclear construction programs.

- **Review the non–national security portfolios at the Los Alamos, Lawrence Livermore, and Sandia labs and identify divestments to focus on nuclear deterrence.** Los Alamos, Lawrence Livermore, and Sandia provide unique capabilities for nuclear deterrence, and each lab maintains extensive non–national security research programs and commercial activities.

- **Review the operations of the Nuclear Weapons Council (NWC).** The statutorily established NWC is required to report to the President and Congress but needs to refocus its efforts on providing comprehensive oversight of DOE and DOD nuclear weapons policy and requirements.

Budget

Concurrent modernization of the nuclear triad and its warheads will be a major challenge to the DOD and DOE budgets over the coming decade. DOE non-nuclear programs should be the first source of additional resources for NNSA activities. Divestment of non-nuclear activities from NNSA laboratories can address some overhead and operational costs. NNSA received $19.7 billion in 2021, and its FY 2023 budget request was $21.4 billion.[106] The next Administration should ensure that funding is targeted to the accelerated development of new warheads.

Personnel

NNSA has tended to act as though it is not part of DOE and has resisted oversight by the Secretary of Energy. The NNSA Act grants some autonomy to the NNSA, but it also makes it clear that NNSA is under the authority of the Secretary. NNSA's leaders need to understand that ultimately, they report to the Secretary.

FERC: ELECTRIC RELIABILITY AND RESILIENCE

Mission/Overview

The Federal Power Act tasks FERC, along with the FERC-designated North American Electric Reliability Corporation (NERC), with promoting the reliability of the bulk power system (the transmission and generation needed to power the electric grid).[107] NERC develops technical standards, and FERC adopts them as mandatory standards (including cyber security standards) with which transmission providers, generators, and utilities must comply. Under the Federal Power Act, critical electric infrastructure security and issues like electromagnetic pulse (EMP) are addressed by both FERC and DOE.[108] In addition, the Infrastructure Investment and Jobs Act directed FERC to establish incentive-based rate treatments by encouraging utilities to invest in advanced cyber security technology and participate in cyber security threat information-sharing programs.

Needed Reforms

There is a growing problem with the electric grid's reliability because of the increasing growth of subsidized intermittent renewable generation (like wind and solar) and a lack of dispatchable generation (for example, power plants powered by natural gas, nuclear, and coal), especially during hot and cold weather.[109] FERC and NERC have been studying the potential for generation shortages across the

nation in the summer[110] and winter.[111] Cyber and physical attacks also threaten the grid. Specific areas for reform include the following:

- **Limit the impact of subsidized renewables on price formation.** Subsidized renewable resources are undermining electric reliability in RTOs. The increase in subsidized, intermittent resources is undermining the ability of RTOs' pricing models to support the reliable dispatchable generation that is needed to serve the grid at all times.[112]

- **Reform the application of reserve margins.** Reserve margins have become largely meaningless. Traditionally, the electric industry has used "reserve margins" to ensure that the grid has enough power plants to guarantee reliability. Generally, reserve margins represent the amount of generation available (power plants) to meet peak electric demand (the time of day and year when people are using the most electricity) plus a percentage of additional generation for backup.[113] However, given the increasing number of intermittent resources (like solar, which may be available during the heat of the day but disappears as the sun sets), other dispatchable generation needs to be available to meet customers' electricity requirements. Therefore, the definitions and calculations of reserve margins and peak load need to be updated to focus on the modern grid's reliability challenges for all times of the day and year.

- **Recognize the interdependence of electric generation and natural gas.** The interdependence of electric generation and natural gas pipelines continues to grow. Given natural gas's important role in generating electricity, especially as backup when renewables are not available, lack of natural gas pipelines or attacks on existing pipelines could threaten our ability to generate electricity.

- **Expand resource diversity and reliability.** Resource diversity is needed to support grid reliability. Pressure to use 100 percent renewables or non–carbon emitting resources threatens the electric grid's reliability. A grid that has access to dispatchable resources such as coal, nuclear, and natural gas for generating power is inherently more reliable and resilient.

- **Protect against cyber and physical attacks.** The threat of cyber and physical attacks on electric infrastructure by foreign actors like China, Russia, North Korea, and Iran, as well as terrorists, continues to grow. The attacks with guns on substations in North Carolina in December 2022 that left customers without power demonstrate the grid's vulnerability.[114]

New Policies

- **Reform RTOs to require reliability.** FERC should direct RTOs to establish reliability pricing for eligible dispatchable generation resources or require intermittent resources to procure backup power for times when they are not available to operate. In addition, Congress should repeal subsidies for generation resources.

- **Update the definition and calculation of reserve margins to support reliability.** FERC, NERC, and DOE should revise the definition of reserve margins to ensure the grid's reliability throughout the day and the year. This will mean recognizing that reserve margins may need to consider "net peak" and exclude non-dispatchable resources from inclusion in reserve margin calculations.

- **Expand and protect natural gas infrastructure in support of electric generation.** FERC needs to ensure that its consideration of natural gas pipeline applications recognizes the role that natural gas plays in electric reliability. FERC also needs to make sure that RTO pricing mechanisms support generators that need to contract for natural gas service on a firm basis.

- **Support resource diversity and reliability.** FERC, NERC, and DOE play key roles in balancing consumer, industrial, and national defense interests to ensure an ongoing reliable, plentiful, and accessible national electricity supply. NERC reliability reviews and FERC's reliability roles should be aware that overreliance on any one power generation fuel source entails concurrent cost and availability risk. FERC should reform market rules that unduly discriminate against dispatchable resources needed for reliability.

- **Strengthen security against cyber and physical threats.** FERC and NERC need to enhance the security of the bulk power system by, for example, banning Chinese-made components, investing in transformers, and hardening substations and other critical infrastructure. DOE should play a leading role in identifying and addressing threats to the grid.

FERC: RTOS/ISOS AND "ELECTRIC POWER MARKETS"

Mission/Overview

For more than 20 years, FERC has issued regulations and directed policies for the creation and operation of regional transmission organizations (RTOs) and independent system operators (ISOs) to manage the dispatch of generation and

transmission of electricity.[115] Under the misnomer "electric power markets," these regulatory constructs use marginal price clearing auctions (in some cases both hourly day-ahead auctions and five-minute day-of-need auctions) and locational marginal pricing to procure electric generation and set prices to meet the needs of the grid. Some RTOs also have capacity auctions. Of the nation's seven RTOs, six are subject to FERC jurisdiction (but not ERCOT in Texas). Areas without an RTO include the Southeast and portions of the West (although California is in an RTO).

Needed Reforms

Too many conservatives have assumed that because RTOs are described as "electric power markets," market forces of supply and demand set electric prices and benefit customers. RTOs are complex regulatory constructs (with rules set by FERC) that obscure government interference and preferences for preferred resources. Furthermore, government preferences and subsidies for resources like wind and solar distort price formation for electricity that is undermining the reliability of the grid. Finally, customers are not seeing the full economic benefits that non-fuel, subsidized resources should provide. Additionally:

- **Electric reliability is threatened in many RTOs.** As subsidized renewables (like wind and solar receiving tax credits) and state renewable portfolio standards (RPS) programs have disrupted market functions, price distortions have driven out reliable, dispatchable resources like coal, natural gas, and nuclear generation in various RTOs. The result: Electric reliability is decreasing in many parts of the country.[116] As noted, FERC and NERC have been studying the potential for summer and winter shortages.[117]

- **RTOs are not providing the full economic benefits of renewables to customers.** Because RTOs use marginal price auctions where natural gas usually sets the clearing price paid to all generators, the economic benefits of renewables (no fuel, tax credits, etc.) are flowing mainly to renewables investors and not to customers (although customers do benefit from some decrease in marginal costs). Yet reliability is decreasing, so customers are getting the worst of both worlds, paying more for electricity and having less reliability for the money.

- **Big Green and Big Tech want RTO expansion.** Renewable developers, large industrial users, and Big Tech tend to want RTO expansion for their own economic and ESG reasons. These entities can benefit economically from the complexity and marginal pricing regime of the RTOs. Increased costs and reliability problems are often shifted to other customers.

- **Unlike vertically integrated utilities that are accountable to state elected officials and state public utility commissions, RTOs and their participants are accountable only to FERC.** Even then, however, accountability is indirect through the tariffs (rules) that the RTOs adopt and FERC approves. In addition, unlike utilities, generators in an RTO have no obligation to serve customers.

New Policies

FERC must make reliability of the grid and service to end use top priorities. To do so, it should:

- **Reexamine the premise of RTOs.** RTOs no longer seem to work for the benefit of the American people. Marginal price auctions for energy are not ensuring the reliability of the grid and are not passing the full economic benefits of subsidized renewables on to customers. FERC needs to reexamine the RTOs under its jurisdiction to make sure that they procure reliable and affordable electricity for the benefit of the American people.

- **Ensure that RTOs return to market fundamentals so that they serve customers, not special interests and political causes.** FERC should require RTOs to ensure that reliable, dispatchable resources are properly valued to provide electricity when needed for the benefit of customers. Potential reforms could include:

    1. Requiring renewable generators to provide intra-day backup by dispatchable on-demand generation so that bids by intermittent resources into RTOs equate fairly with far more valuable on-demand dispatchable resources;

    2. Creating dual energy markets for dispatchable and nondispatchable resources; or

    3. Eliminating capacity markets where intermittent resources participate and instead establishing "reliability" markets where dispatchable on-demand resources participate.

    Alternatives to marginal price auctions also should be considered.

- **Direct the RTOs to ensure that the economic benefits of renewables (like tax credits and no fuel costs) are passed on to customers.**

- **End undue discrimination that allows subsidized resources to distort price formation in RTOs.**
- **Affirm its commitment that states will decide whether to join an RTO instead of imposing RTOs on regions that do not want them.** FERC should also consider allowing states to enter into non-RTO power pools with alternative structures for the sharing of resources and electric generation.

FERC: ELECTRIC TRANSMISSION

Mission/Overview

Under the Federal Power Act, FERC has the authority to regulate the rates, terms, and conditions of interstate electric transmission. (Pursuant to court cases, interstate transmission can be entirely within a state, although the part of Texas served by ERCOT is not under FERC transmission jurisdiction.)

Needed Reforms

FERC has been considering how to plan for and allocate costs for new transmission lines and how new generation resources will be interconnected to the transmission grid. (Transmission expansion and replacement decisions are usually made by local utilities or by an RTO or regional planning entity). Through two major rulemakings,[118] FERC is attempting to facilitate the building of more long-range transmission lines and to socialize more of the costs of transmission buildouts to more customers in order to make it cheaper for renewable developers (primarily) to interconnect to the grid and sell their power. Socializing such costs is a form of subsidy for generators and will cause further price distortions in RTOs and ISOs that will make it less economical for reliable, dispatchable resources like coal, nuclear, and natural gas to stay operational and support reliability.[119]

Also, under the Infrastructure Investment and Jobs Act, DOE and FERC are granted authority to site and permit high-priority transmission lines as National Interest Electric Transmission Corridors (NIETCs). The Inflation Reduction Act provides funding to DOE to support transmission expansion.[120] These initiatives will undermine state input and decision-making. FERC will consider rules on how NIETC transmission applications are to be made.

New Policies

FERC should either change course on its existing transmission rulemakings (if still in progress) or issue a new rulemaking to:

- **Ensure that transmission planning and interconnection processes are resource neutral.**
- **Prevent socializing costs for customers who do not benefit from the projects or justifying such cost shifts as advancing vague "societal benefits" such as climate change.**
- **Stop cost allocation from becoming a subsidy for generators, such as renewables.**

With respect to NIETCs, FERC and the new DESAS should ensure that state interests are respected and not allow such NEITC transmission lines to be developed as a mere subsidy to renewable developers. Furthermore, much of the transmission buildout (including its attendant costs) is being driven by renewable developers seeking market share. These projects are causing rates for customers to go up and hurting reliability. FERC needs to ensure that transmission buildouts are planned for the benefit of customers.

FERC: NATURAL GAS PIPELINES

Mission/Overview

FERC permits, sites, and authorizes the construction and operation of interstate natural gas pipelines.[121] It also regulates the rates for the shipping of natural gas[122] (but not the price of the natural gas commodity, which is market based). FERC is charged with ensuring that natural gas pipelines are approved if they are required by the "public convenience and necessity."[123] Pipeline permitting is subject to environmental reviews under NEPA, and the rate for the pipeline and the shipping of the commodity is set by FERC under a just and reasonable standard. Once FERC approves a project, the holder of the certificate has the sovereign's power of eminent domain.

Needed Reforms

Natural gas pipelines are vital for the economy, manufacturing, heating, and electric generation. Opposition from "Keep it in the ground" environmentalists has made it harder to gain approvals for natural gas pipelines. Under Democrat leadership, FERC has proposed official policies to consider upstream and downstream GHG emissions from the use of the natural gas that would be shipped in the pipeline to be part of FERC's public-interest determination when deciding whether to approve a pipeline. There is conflicting direction from the D.C. Circuit on the GHG issue, which also could be seen as a "major questions" issue under the U.S. Supreme Court's *West Virginia v. EPA* decision.[124]

New Policies

FERC should:

- **Recommit itself to the NGA's purpose of providing the American people with access to affordable and reliable natural gas.**
- **Limit its NGA decision-making on natural gas pipeline certificates to the question of whether there is a need for the natural gas.**
- **Limit its NEPA analysis to the impacts of the actual pipeline itself, not indirect upstream and downstream effects.**

In addition, Congress, the states, and FERC should consider how better to protect and compensate property owners whose property is taken for the benefit of the public. FERC also needs to be mindful that natural gas pipelines and projects are important for domestic access to natural gas, including local natural gas utilities, natural gas–fired electric generation, and manufacturing, as well as for exports of liquefied natural gas.

FERC: LNG EXPORT FACILITIES

Mission/Overview

FERC permits, sites, and authorizes the construction and operation of LNG export facilities.[125] It does not authorize the export of natural gas; DOE exercises that authority. LNG export facilities are important for delivering natural gas to markets around the world and have become an important policy tool in limiting the ability of Russia and Middle Eastern countries to use energy as a tool in foreign affairs.

Needed Reforms

LNG exports are opposed by climate activists. In addition, some domestic manufacturers argue that LNG exports decrease available U.S. supplies of natural gas and increase the domestic price, thereby harming the competitive advantages of U.S. manufacturers in world markets.

Currently, most LNG export facilities are along the Gulf of Mexico in Texas and Louisiana.[126] Attempts to build facilities on the west coast (Jordan Cove LNG[127]) and the east coast have not moved forward for a variety of reasons; delays and costs of litigation can cause developers to cancel projects. An Alaska facility was approved by FERC in 2020, and the Biden Administration has indicated its support.[128] An east coast facility in Pennsylvania (or nearby) would unlock Marcellus shale natural gas for export.

FERC is considering policy statements that would consider GHG emissions as part of its NEPA review and its NGA determination as to whether approval of an LNG export facility is consistent with the public interest.

New Policies

Since Congress through the NGA has already determined that LNG exports to countries with free trade agreements are in the public interest,[129] and because LNG exports help to ensure America's ability to support our friends and allies around the world while also supporting domestic natural gas production, FERC:

- **Should not use environmental issues like climate change as a reason to stop LNG projects.**

- **Should ensure that the natural gas pipelines that are needed deliver more of the product to market, both for domestic use and export, and are reviewed, developed and constructed in a timely manner.**

NUCLEAR REGULATORY COMMISSION

Mission/Overview

The Energy Reorganization Act of 1974[130] created the Nuclear Regulatory Commission (NRC). Before then, the commercial nuclear industry was regulated by the Atomic Energy Commission (AEC), which was established by the 1954 Atomic Energy Act.[131] Importantly, the AEC was responsible for encouraging and regulating commercial nuclear power. Broad criticism of this dual function was a major factor in the establishment of the NRC, which held regulatory authority while the newly established Department of Energy held the advocacy function. Today, the NRC is responsible for a broad range of regulatory activities, including reactor safety, oversight of nuclear materials, and protection against radiation as well as permitting new reactors, certifying new reactor designs, and regulating nuclear waste management activities.

Needed Reforms

In 1989, the NRC established alternative licensing processes that were meant to provide a more predictable and efficient regulatory pathway for new Light Water Reactors (LWRs) by combining construction and operating nuclear power plant licenses, allowing for Early Site Permits, and establishing a framework for pre-approval of reactor designs. More recently, the Nuclear Energy Innovation and Modernization Act directed the NRC to establish a technology-neutral licensing process for new, advanced reactor technologies.[132] Despite these efforts, the NRC remains a significant cost and regulatory barrier to new nuclear power. Especially

frustrating is that these costs to a large extent are due to the agencies being overly prescriptive rather than outcomes-focused and fall on well-known and understood LWR reactor technologies.

New Policies

While refocusing its regulatory efforts on new reactor technologies, the NRC should also continue to ensure the security of radiological sources and mitigate cybersecurity risks across the industry. Applications for Combined Operating Licenses (COLs) and design certifications that rely on light-water technology should generally be completed within two years. Early Site Permits should generally be issued within one year for construction on or adjacent to an existing reactor site. Additionally, the NRC should:

- **Expedite the review and approval of license extensions of existing reactors, which will require the NRC to streamline and focus its NEPA review process.**

- **Set clear radiation exposure and protection standards by eliminating ALARA ("as low as reasonably achievable") as a regulatory principle and setting clear standards according to radiological risk and dose rather than arbitrary objectives.**

- **Work with Congress to reform its funding approach so that licensee fees are generally required for activities that are specific to a regulated entity, with other agency costs being provided through normal appropriations.**

Budget

In FY 2022, the NRC was required to recover approximately 85 percent of its $887.7 million budget through licensee fees.[133] The Nuclear Energy Innovation and Modernization Act requires the NRC to recover nearly all of its costs through fees. These reforms would likely not cost additional money but could rebalance the fee-versus-appropriations calculation.

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13

ENVIRONMENTAL PROTECTION AGENCY

Mandy M. Gunasekara

MISSION STATEMENT

Creating a better environmental tomorrow with clean air, safe water, healthy soil, and thriving communities.

A conservative U.S. Environmental Protection Agency (EPA) will take a more supportive role toward local and state efforts, building them up so that they may lead in a meaningful fashion. This will include the sharing of federal resources and agency expertise. Creating environmental standards from the ground up is consistent with the concept of cooperative federalism embedded within many of the agency's authorizing statutes and will create earnest relationships among local officials and regulated stakeholders. This in turn will promote a culture of compliance.

A conservative EPA will track success by measured progress as opposed to the current perpetual process and will convey this progress to the public in clear, concise terms. True transparency will be a defining characteristic of a conservative EPA. This will be reflected in all agency work, including the establishment of open-source science, to build not only transparency and awareness among the public, but also trust.

The challenge of creating a conservative EPA will be to balance justified skepticism toward an agency that has long been amenable to being coopted by the Left for political ends against the need to implement the agency's true function: protecting public health and the environment in cooperation with states. Further, the EPA needs to be realigned away from attempts to make it an all-powerful energy and land use policymaker and returned to its congressionally sanctioned role as environmental regulator.

OVERVIEW

The Status Quo. Not surprisingly, the EPA under the Biden Administration has returned to the same top-down, coercive approach that defined the Obama Administration. There has been a reinstitution of unachievable standards designed to aid in the "transition" away from politically disfavored industries and technologies and toward the Biden Administration's preferred alternatives. This approach is most obvious in the Biden Administration's assault on the energy sector as the Administration uses its regulatory might to make coal, oil, and natural gas operations very expensive and increasingly inaccessible while forcing the economy to build out and rely on unreliable renewables.[1] This approach has also been applied to pesticides and chemicals as the Biden Administration pushes the "greening" of agriculture and manufacturing among other industrial activities.

As a consequence of this approach, we see the return of costly, job-killing regulations that serve to depress the economy and grow the bureaucracy but do little to address, much less resolve, complex environmental problems. In some instances, these actions even work to undermine environmental efforts as they push industries overseas to countries whose enforcement of pollution-control requirements is seriously deficient—if indeed they have any meaningful requirements at all. Meanwhile, agency costs and staffing have increased significantly. The EPA's fiscal year (FY) 2023 request included a 28.8 percent increase in funding and a 13.3 percent increase in staffing, making it the "highest funding ever" in EPA's history.[2]

Compared to the Obama Administration, there is one key difference in the Biden Administration's approach: In a concerted effort to diminish congressional oversight, the position of EPA Administrator has been overshadowed by the creation of multiple "Climate Czars" at the Biden White House. In effect, current EPA Administrator Michael Regan, who has a reputation as a well-meaning, generally capable former state official, has been left out of the political loop, serving mostly as a pleasant distraction from EPA's expansive, costly, and economy-destroying agenda.

A Coopted Mission. The EPA has been a breeding ground for expansion of the federal government's influence and control across the economy. Embedded activists have sought to evade legal restraints in pursuit of a global, climate-themed agenda, aiming to achieve that agenda by implementing costly policies that otherwise have failed to gain the requisite political traction in Congress. Many EPA actions in liberal Administrations have simply ignored the will of Congress, aligning instead with the goals and wants of politically connected activists.

Pursuit of this globally focused agenda has distracted the agency from fulfilling its core mission, thereby creating a backlog of missed statutory deadlines,[3] and at times has even led to preventable environmental disasters. During the Obama Administration, for example, the U.S. experienced two of the worst environmental

disasters in decades, including the Flint, Michigan, water crisis in 2014[4] and the Gold King Mine spill in 2015.[5]

Beyond creating such immediate and tangible harm in various communities, an EPA led by activism and a disregard for the law has generated uncertainty in the regulated community, vendetta-driven[6] enforcement, weighted analytics, increased costs, and diminished trust in final agency actions. Although the U.S. environmental story is very positive, there has been a return to fear-based rhetoric within the agency, especially as it pertains to the perceived threat of climate change. Mischaracterizing the state of our environment generally and the actual harms reasonably attributable to climate change specifically is a favored tool that the Left uses to scare the American public into accepting their ineffective, liberty-crushing regulations, diminished private property rights, and exorbitant costs. In effect, the Biden EPA has once again presented a false choice to the American people: that they have to choose between a healthy environment and a strong, growing economy.

Historical Role and Purpose. For many decades, rapid industrial activity with an unorganized approach to environmental standards significantly degraded the country's environment. Particle pollution in the form of a thick, fog-like haze that at times was laced with harmful metals was a frequent occurrence across the country.[7] More than 40 percent of communities failed to meet basic water quality standards, and in 1969, the Cuyahoga River infamously caught fire after sparks from a passing train ignited debris in the water, which was filled with heavy industrial waste.[8]

EPA was established on December 2, 1970, following a call by President Richard Nixon to "rationally and systematically" organize existing piecemeal efforts to clean up and protect the environment.[9] Under Reorganization Plan No. 3, the EPA was to initiate a "coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food."[10] Numerous authorities were consolidated and given to the EPA including research, monitoring, standard-setting, and enforcement activities. The mission to protect public health and the environment was born, and the first Administrator was sworn in on December 4, 1970.

Congress followed suit with the landmark Clean Air Act of 1970 (CAA)[11] and the Federal Water Pollution Control Act of 1972.[12] The subsequent Clean Air Act Amendments of 1990[13] played a significant role in the expansion of EPA's responsibilities and legal authority with the agency then being tasked with the development of new regulatory mechanisms that included, among other things, cap-and-trade programs for the control of sulfur dioxide and technological standards for nitrogen oxide emissions from coal-fired power plants, a vastly expanded hazardous air pollutant program, a federal operating permit program, and new regulations governing phaseout of the production of ozone-depleting substances in conjunction with U.S. ratification of the Montreal Protocol in 1988.[14]

Subsequently, especially during the Obama Administration, EPA experienced massive growth as it was used to pursue far-reaching political goals to the point where its current activities and staffing levels far exceeded its congressional mandates and purpose. This expansive status is entirely unnecessary: It has nothing to do with improving either the environment or public health. The EPA's initial success was driven by clear mandates, a streamlined structure, recognition of the states' prominent role, and built-in accountability. Fulfilling the agency's mission in a manner consistent with a limited-government approach proved to be extremely effective during the agency's infancy.

Back to Basics. EPA's structure and mission should be greatly circumscribed to reflect the principles of cooperative federalism and limited government. This will require significant restructuring and streamlining of the agency to reflect the following:

- **State Leadership.** EPA should build earnest relationships with state and local officials and assume a more supportive role by sharing resources and expertise, recognizing that the primary role in making choices about the environment belongs to the people who live in it.

- **Accountable Progress.** Regulatory efforts should focus on addressing tangible environmental problems with practical, cost-beneficial, affordable solutions to clean up the air, water, and soil, and the results should be measured and tracked by simple metrics that are available to the public.

- **Streamlined Process.** Duplicative, wasteful, or superfluous programs that do not tangibly support the agency's mission should be eliminated, and a structured management program should be designed to assist state and local governments in protecting public health and the environment.

- **Healthy, Thriving Communities.** EPA should consider and reduce as much as possible the economic costs of its actions on local communities to help them thrive and prosper.

- **Compliance Before Enforcement.** EPA should foster cooperative relationships with the regulated community, especially small businesses, that encourage compliance over enforcement.

- **Transparent Science and Regulatory Analysis.** EPA should make public and take comment on all scientific studies and analyses that support regulatory decision-making.

ADMINISTRATOR'S OFFICE AND REORGANIZATION RESPONSIBILITY

The Office of the Administrator (AO) is intended to provide executive and logistical support for the EPA Administrator. Its stated purpose is to support EPA leadership and activities. To implement policies that are consistent with a conservative EPA, the agency will have to undergo a major reorganization. The Deputy Chief of Staff for Policy position within the Administrator's office should be renamed the Deputy Chief of Staff for Regulatory Improvement. This position would oversee a reorganization effort that includes the following actions:

- Returning the environmental justice function to the AO, eliminating the stand-alone Office of Environmental Justice and External Civil Rights.

- Returning the enforcement and compliance function to the media offices (air, water, land, and emergency management, etc.) and eliminating the stand-alone Office of Enforcement and Compliance Assistance, which has created a mismatch between standard-setting and implementation.

- Using enforcement to ensure compliance, not to achieve extrastatutory objectives.

- Developing a plan for relocating regional offices so that they are more accessible to the areas they serve and deliver cost savings to the American people.

- Restructuring the Office of International and Tribal Affairs into the American Indian Environmental Office and returning the international liaison function to media offices where appropriate.

- Eliminating the Office of Public Engagement and Environmental Education as a stand-alone entity and reabsorbing substantive elements into the Office of Public Affairs.

- Relocating the Office of Children's Health Protection and the Office of Small and Disadvantaged Business Utilization from the AO and reabsorbing those functions within the media offices (air, water, land, and emergency management, etc.).

- Reviewing the grants program to ensure that taxpayer funds go to organizations focused on tangible environmental improvements free from political affiliation.

- Resetting science advisory boards to expand opportunities for a diversity of scientific viewpoints free of potential conflicts of interest.
- Restoring the guidance portal to ensure that regulatory and subregulatory standards are clear to affected entities.
- Working with Assistant Administrators to implement major reforms in media offices.

Day One Executive Order. To initiate the review and reorganization, a Day One executive order should be drafted for the incoming President with explicit language requiring reconsideration of the agency's structure with reference to fulfilling its mission to create a better environmental tomorrow with clean air, safe water, healthy soil, and thriving communities. The order should set up "pause and review" teams to assess the following:

- **Major Rules and Guidance Materials.** Identify existing rules to be stayed and reproposed and initiate rule development in appropriate media offices.
- **Pending Petitions.** Grant new petitions for rule reconsideration and stays of rules.
- **Grants.** Stop all grants to advocacy groups and review which potential federal investments will lead to tangible environmental improvements.
- **Legal Settlements.** Reassess any "sue and settle" cases and develop a new policy to establish standard review and oversight, including public notification and participation.
- **Employee Review.** Determine the opportunity to downsize by terminating the newest hires in low-value programs and identify relocation opportunities for Senior Executive Service (SES) positions.
- **Budget Review.** Develop a tiered-down approach to cut costs, reduce the number of full-time equivalent (FTE) positions, and eliminate duplicative programs. EPA should not conduct any ongoing or planned activity for which there is not clear and current congressional authorization, and it should communicate this shift in the President's first budget request.
- **Risk Management Policy.** Revise guidance documents that control regulations such as the social cost of carbon; discount rates; timing of

regulatory review (before options are selected); causality of health effects; low-dose risk estimation (linear no-threshold analysis); and employment loss analysis.

Personnel

The majority of the political appointee team must be assembled, vetted, and ready to deploy before Day One. To the extent provided by the Federal Vacancies Reform Act,[15] appointees in consideration for Senate-confirmed positions (excluding the Administrator) should be prepared to serve as a Deputy or Principal Deputy to get into the agency on Day One while their nomination and affiliated confirmation processes proceeds. In addition to a deputy slated for the Assistant Administrator role, each office will need a political chief of staff, senior advisers designated to run suboffices, and energized assistants. Teams should be balanced with technical knowledge, legal expertise, and political exposure. Ideally, they should also be geographically diverse. Appointee positions should also extend to all the regional offices and specialty labs.

OFFICE OF AIR AND RADIATION (OAR)

OAR develops national programs, policies, and regulations to control air pollution and radiation exposure. In recent decades, OAR and its statutory responsibilities under the Clean Air Act have been reimagined in an attempt to expand the reach of the federal government. The U.S. Supreme Court has stopped and stricken several actions from OAR under liberal Administrations, citing a lack of requisite legal support. A reformed OAR should focus on EPA's mission of limiting and minimizing criteria and hazardous air pollutants in partnership with the states.

Cross-Cutting Reforms. OAR consists of four suboffices with two located in Washington, D.C.; one in Ann Arbor, Michigan; and one at Research Triangle Park in Raleigh, North Carolina. The following reforms should be implemented across all OAR offices:

- Issue a rule to ensure consistent and transparent consideration of costs.
- When doing cost-benefit analysis, use appropriate discount rates, focus on the benefits of reducing the pollutant targeted by Congress, identify "co-benefits" separately, and acknowledge the uncertainties involved in quantifying benefits.
- Review and revise Reasonably Available Control Technology (RACT) cost guidance to ensure that calculations are accurate and reflect the actual regulatory burden, including costs of air rules implementation and compliance.

- Obey Congress's direction in CAA § 321[16] to "conduct continuing evaluations" of the employment and plant-closure effects of air regulations.

- Ensure that all provisions of CAA § 307(d)[17] are observed. Congress placed special constraints on air rules, and that intent should be respected.

- To the extent that the Inflation Reduction Act (IRA)[18] remains in place, ensure to the maximum extent possible that grants and funding are provided to state regulatory entities and not to nonprofits.

- Remove any regulations or requirements that confer on third parties any authorities that have been provided to EPA, such as the oil and gas supplemental, which created a Super-Emitter Response Program that allows third parties to act as EPA enforcers.

Policy-Specific Actions

National Ambient Air Quality Standards (NAAQS)

- EPA adopted by regulation a goal of restoring natural visibility by 2064. The statute does not require this, and EPA should consider whether a longer timeline is less disruptive or more realistic. Regional haze rules should be revised to prevent subsequent "planning periods" from being abused to compel the shutdown of disfavored facilities.

- Under the Good Neighbor Program/Interstate pollutant transport program, review Biden-era regulations to ensure that they do not "overcontrol" upwind states in violation of the statute as construed by the U.S. Supreme Court. Reverse the program's 2022 expansion beyond power plants.

- Putting guardrails on downwind states is an abuse of the CAA § 126(b)[19] petition process. EPA must ensure, in keeping with statutory text, that petitions identify a reasonably discrete "group" of upwind sources alleged to violate the good neighbor provision.

- Ensure that the Clean Air Scientific Advisory Committee (CASAC) considers all of the statutorily charged factors (for example, social and economic effects resulting from NAAQS attainment and maintenance strategies).

- Ensure that the requirements EPA puts on a state that has achieved attainment status from nonattainment status are limited to those that

are statutorily required, and remove any regulatory differences between attainment and maintenance that are not explicitly required by law.

- Streamline the process for state and local governments to demonstrate that their federally funded highway projects will not interfere with NAAQS attainment.
- Adopt policies to prevent abuse of EPA's CAA "error correction" authority.[20] EPA historically has used this to coerce states into adopting its favored policies on pain of imposition of a Federal Implementation Plan (FIP).
- Limit EPA's reliance on CAA § 301[21] general rulemaking authority to ensure that it is not abused to issue regulations for which EPA lacks substantive authority elsewhere in the statute.
- If possible, return the standard-setting role to Congress.

Climate Change

- Remove the Greenhouse Gas Reporting Program (GHGRP) for any source category that is not currently being regulated. The overall reporting program imposes significant burdens on small businesses and companies that are not being regulated. This is either a pointless burden or a sword-of-Damocles threat of future regulation, neither of which is appropriate.
- Establish a system, with an appropriate deadline, to update the 2009 endangerment finding.
- Establish a significant emissions rate (SER) for greenhouse gasses (GHGs).

Regulating Hydrofluorocarbons (HFCs) Under the American Innovation and Manufacturing (AIM) Act[22]

- Repeal Biden Administration implementing regulations for the AIM Act that are unnecessarily stringent and costly.
- Refrain from granting petitions from opportunistic manufacturers to add new restrictions that further skew the market toward costlier refrigerants and equipment.

- Conduct realistic cost assessments that reflect actual consumer experiences instead of the current unrealistic ones claiming that the program is virtually cost-free.

Mobile Source Regulation by the Office of Transportation and Air Quality

- Establish GHG car standards under Department of Transportation (DOT) leadership that properly consider cost, choice, safety, and national security.
- Review the existing "ramp rate" for car standards to ensure that it is actually achievable.
- Include life cycle emissions of electric vehicles and consider all of their environmental impacts.
- Restore the position that California's waiver applies only to California-specific issues like ground-level ozone, not global climate issues.
- Ensure that other states can adopt California's standards only for traditional/criteria pollutants, not greenhouse gases.
- Stop the use of the International Civil Aviation Organization (ICAO) to increase standards on airplanes.
- Reconsider the Cleaner Trucks Initiative to balance the goal of driving down emissions without creating significant costs or complex burdens on the industry.

Air Permitting Reforms for New Source Review (Pre-Construction Permits) and Title V (Operating Permits)

- Develop reforms to ensure that when a facility improves efficiency within its production process, new permitting requirements are not triggered.
- Restore the Trump EPA position on Once-In, Always-In (that major sources can convert to area sources when affiliated emissions standards are met).
- Revisit permitting and enforcement assumptions that sources will operate 24 hours a day, 365 days a year; this artificially inflates a source's potential to emit (PTE), which can result in more stringent permit terms.

- Defend the position that petitions to object to Title V should not be used to second-guess previous state decisions.
- Clarify the relationship between New Source Review and Title V to ensure that Title V is used only as intended by Congress.

CAA Section 111[23]

- Restore the position that EPA cannot regulate a new pollutant from an already regulated source category without making predicate findings for that new pollutant.
- Institute automatic withdrawal of any proposed rule that is not finalized within the statutorily prescribed one-year period.
- Revise general implementing regulations for existing source regulatory authority under CAA § 111(d)[24] to ensure that EPA gives full meaning to Congress's direction, including source-specific application, and that the state planning program is flexible, federalist, and deferential to the states.

CAA Section 112 (Hazardous Air Pollutants)[25]

- Unregulated point or non-point source (fugitive emissions) of an already regulated hazardous air pollutant do not require a Maximum Available Control Technology (MACT) standard.
- Ensure that Section 112 regulations are harmonized with Section 111 regulations that apply to the same sector/sources.
- Ensure that cost-benefit analysis is focused on a regulation's targeted pollutant and separately identify ancillary or co-benefits.

Radiation

- Assess and update the agency's radiation standards so that they align with those of other agencies, including the Nuclear Regulatory Commission, Department of Energy, and Department of Transportation, as well as international standards.
- Level-set past, misleading statements regarding radiological risk and reassess the Linear Non-Threshold standard.

Personnel, Budget, and Office Restructuring

- Place a political appointee in Ann Arbor, Michigan, for the Office of Transportation and Air Quality (OTAQ, regulating mobile sources) and a political appointee in Research Triangle Park, North Carolina, for the Office of Air Quality Planning and Standards (OAQPS, regulating stationary sources) and give those appointees the requisite titles and authority to oversee the OTAQ and OAQPS staff.

- Establish a political Chief of Staff in D.C. to manage the entire air office.

- Pull the Renewable Fuel Standard (RFS) program out of OTAQ; establish its own suboffice in D.C. (with status parallel to OTAQ and OAQPS) that is headed by a political appointee; and establish a Memorandum of Understanding with the Department of Agriculture and the Department of Energy to work together to establish RFS programs.

- Require regional air offices to receive approval from OAR before moving forward with enforcement actions in order to ensure that enforcement is meeting the requirements established by regulations and is not going beyond them.

OFFICE OF WATER (OW)

OW is responsible for ensuring safe drinking water and restoring and maintaining oceans, watersheds, and their aquatic ecosystems to protect human health, support economic and recreational activities, and provide healthy habitats for fish, plants, and wildlife. Its two main statutes include implementing the Clean Water Act (CWA)[26] and Safe Drinking Water Act (SDWA).[27] OW has generated a large number of expansive regulations that infringe on private property rights, most notably with the Waters of the U.S. program.

Needed Reforms

The overarching theme for reform is guidance on guidance. OW relies heavily on guidance documents that are outdated and that sometimes have been in a "deliberative" state for years. Additionally, there are significant issues surrounding OW's holding up guidance as something more than simply guidance: as something akin to law in certain circumstances. The August 6, 2019, "Office of Water Policy for Draft Documents" memorandum[28] should be strictly enforced to ensure transparency as well as good governance by not letting guidance linger in draft form and by also ensuring that guidance documents are clearly just that: guidance. They do not have the effect of law and should not be treated by the office as if they did have any such effect.

As a matter of broad practice, OW should be complying with statutorily established deadlines in all situations with only minimal exceptions. In cases where statutory deadlines will not be met, senior management should be made aware of the delay and should have an opportunity to determine whether alternative courses should be taken.

Depending on the outcome of regulations from the Biden Administration as well as intervention by the Supreme Court on both waters of the United States (WOTUS) and CWA Section 401,[29] the repeal and reissuance of new regulations should be pursued.

New Policies

New regulations should include the following:

- A WOTUS rule that makes clear what is and is not a "navigable water" and respects private property rights. Coordinate with Congress to develop legislation, if necessary, to codify the definition in *Rapanos v. United States* that "waters of the United States" can refer only to "relatively permanent, standing or continuously flowing bodies of water…as opposed to ordinarily dry channels through which water occasionally or intermittently flows."[30]

- A rule that provides clarity and regulatory certainty regarding the CWA Section 401 water quality certification process to limit unnecessary delay for needed projects, including by establishing a discharge-only approach with a limited scope (from point sources into navigable waters), assessing only water quality factors that are consistent with specific CWA sections, and excluding speculative analysis regarding future potential harm.

- A rule to ensure that CWA Section 308[31] has a clear and enforced time limit.

- A rule to clarify the standard for criminal negligence under CWA Sections 402[32] and 404.[33]

- A rule to prohibit retroactive or preemptive permits under CWA Section 404.

- A rule to promote and shape nutrient trading that utilizes a carrot-versus-stick approach when dealing with nutrient compliance.

- A rule to update compensatory mitigation that imposes no new or additional requirements beyond current law.

- A rule on updates necessary for the effective use of the CWA needs survey.

- An executive order requiring EPA to find avenues and expedite the process for states obtaining primacy in available CWA and SDWA programs. This order would require coordination with the Army Corps of Engineers and the Department of the Interior.

- Implementation of additional policies to address challenges in water workforce, issues surrounding timely actions on primacy applications, and cybersecurity.

Budget

While the overall goal is certainly to reduce government spending, there is one very targeted area where increased spending would be in the nation's interest. The Clean Water Act needs survey is the entire basis for how congressionally appropriated funds directed to state revolving funds—standard annual appropriations that are the true underpinning of all infrastructure funding for drinking water and clean water—are distributed by EPA across the country. Because this program is currently underfunded, money is being thrown at untargeted locations while water infrastructure is crumbling at other locations. Increased targeted funding would greatly benefit water systems across the country at a time when intervention is crucial, leaving fewer communities with significant water service challenges.

Personnel

OW would benefit greatly from the reshifting of SES employees to different programs and from headquarters out to regional offices.

OFFICE OF LAND AND EMERGENCY MANAGEMENT (OLEM)

OLEM's mission is to partner with other federal agencies, states, tribes, local governments, and communities to clean up legacy pollution and revitalize land for reuse. OLEM executes this mission by protecting human health and the environment while leveraging economic opportunities and creating jobs. OLEM also oversees the agency's emergency response. The main statutes that OLEM executes are the Resource Conservation and Recovery Act (RCRA)[34] to regulate waste management; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)[35] to clean up Superfund sites and provide resources for cleaning up brownfields sites; and Section 112(r) of the Clean Air Act[36] to reduce the likelihood of accidental chemical releases.

Needed Reforms

OLEM's main function is to oversee the execution of cleanups under CERCLA and RCRA; therefore, it is critical that OLEM staff focus on project management more than policy creation. Emphasizing productivity more than process and policies

can result in more work on the ground in communities where Americans live and work. OLEM can accomplish this goal by determining the scope of work based on an actual reduction in exposure to chemicals as opposed to the elimination of theoretical potential exposures. To manage cleanups more effectively, OLEM should:

- Require training in project management for project managers (as opposed to all staff having a general science background).
- Adopt EPA's Lean Management System (ELMS) across all OLEM programs.
- Delegate all CERCLA authority from the Administrator to the OLEM Assistant Administrator as opposed to a direct delegation to the Regional Administrators.
- Find opportunities to transfer work and funding to states and tribes.

New Policies

Superfund. To execute more efficient and effective cleanups, the following changes are needed in the Office of Superfund Remediation and Technology Innovation (OSRTI):

- Revise the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to modernize and streamline the cleanup process using lessons learned from the execution of the NCP over the past 40-plus years.
- Increase the use of CERCLA removal authority to execute short-term cleanups, which will provide clarity and finality for potentially responsible parties (PRPs) and return cleaned up land to communities more swiftly.
- Streamline the process for determining Applicable or Relevant and Appropriate Requirements based on commonalities across sites as opposed to making such determinations on a site-by-site basis.
- Revise groundwater cleanup regulations and policies to reflect the challenges of omnipresent contaminants like PFAS.
- Revisit the designation of PFAS chemicals as "hazardous substances" under CERCLA.
- Allow PRPs to perform the statutorily required five-year reviews of Superfund cleanups to free OLEM resources.

- Expand and fully stand up the Office of Mountains, Deserts and Plains to support innovative approaches to the cleaning up of abandoned mines.

- Develop and execute a 10-year cleanup plan to address lead at all existing cleanup sites that includes benchmarks and milestones that allow for congressional and public oversight of the schedule.

RCRA. To streamline waste management, the following changes are needed in the Office of Resource Conservation and Recovery (ORCR):

- Create an RCRA post-closure care permit that is tailored only to post-closure obligations.

- Modify regulations that impede resource efficiency, recycling, and reuse by providing clearly that these materials are not waste. This can be done by promulgating a rule that provides an alternative pathway to hazardous waste regulation to allow the transport of material to legitimate recyclers or back to manufacturers to support the recycling and reuse of material.

- Change the electronic manifest (e-manifest) regulations to a 100 percent electronic system and eliminate all paper manifests and manual filing and data input. This system should operate from a range of common handheld devices and could be expanded to accommodate solid waste and materials for reuse and recycling.

- Reassign regulation and enforcement of air emission standards under the authority of RCRA Section 3004[37] to OAR and revise and modernize the regulations to comport and integrate with CAA rules.

Risk Management Program. If a new Risk Management Program (RMP) rule is finalized by the Biden Administration, it should be revised to reflect the amendments finalized in 2019 to protect sensitive information.

Personnel

The following organizational changes could create resource efficiencies to focus on the highest-value opportunities:

- Eliminate or consolidate the regional laboratories and allow OLEM to use EPA, other government, or private labs based on expertise and cost.

- Consolidate non-core functions (communications, economists, congressional relations, etc.) into one OLEM suboffice to allow the subject-matter offices to focus on the execution of field work.

- Eliminate the Office of Emergency Management and reassign its functions.

    1. Move the emergency management function (currently OEM) into Homeland Security under the Administrator's office.

    2. Incorporate removal authority (currently OEM) into OSRTI.

    3. Retain the oversight and enforcement of the RMP program within OLEM.

    4. Drop "Emergency Management" from OLEM's name.

Budget

While the overall goal is certainly to reduce government scope and spending, OLEM's programs present the best opportunity to use taxpayer dollars to execute EPA's core mission of cleaning up contamination.

OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION (OCSPP)

OCSPP primarily oversees the regulation of new and existing chemicals under the Toxic Substances Control Act (TSCA)[38] and the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)[39] and Federal Food, Drug, and Cosmetic Act (FFDCA).[40] These activities are managed in two separate offices within OCSPP: the Office of Pollution Prevention and Toxics (OPPT, chemicals) and Office of Pesticide Programs (OPP, pesticides). OCSPP is constantly pressured to ban the use of certain chemicals, typically based on fear as a result of mischaracterized or incomplete science.

Needed Reforms and New Policy in OPPT (Chemicals)

- Ensure that decision-making is risk-based rather than defaulting to precautionary, hazard-based approaches like the Integrated Risk Information System (IRIS).

- Focus the scope of chemical evaluations on pathways of exposure that are *not* covered by other program offices and other environmental statutes, and eliminate scope creep to ensure that evaluations can be completed in a timely manner consistent with the statutory requirements.

- Ensure that new chemical evaluations are conducted in a timely manner, consistent with statutory requirements, to ensure the competitiveness of U.S. manufacturers.

- For new chemicals, reset the program to ensure that reviews are completed on a timeline that is consistent with the statute. This includes revising the regulations governing the reviews of new chemicals.

- Ensure that risk evaluations and risk management rules presume that workplaces are following all OSHA requirements, including requirements for personal protective equipment (PPE).

- Apply real-world use of chemicals when assessing conditions of use for risk evaluations.

- Transition the Safer Choice program to the private sector.

- Right-size the TSCA fee's rule so that it is consistent with the tasks that the agency is actually completing within the timelines of the statute and is not covering the costs of EPA inefficiency or overreach.

- Revise existing policies to address the requirements of the 2016 Lautenberg amendments to the TSCA.[41]

- Develop a framework rule for risk management approaches that will be used under TSCA for existing chemicals.

Needed Reforms and New Policy in OPP (Pesticides)

- OPP should rely on Department of Agriculture and state usage data that reflect actual pesticide use in registration reviews and Endangered Species Act (ESA)[42] analyses. The U.S. Fish and Wildlife Service and National Marine Fisheries Service should rely on similar data in their ESA analyses.

- OPP has rigorous testing requirements that registrants must meet before pesticides are allowed on the market. However, when pesticides undergo registration review every 15 years, EPA relies on publicly available data with differing levels of quality and transparency. Data standards are needed to ensure that information relied on by EPA is made available to the agency at a similar level as the original testing data conducted by registrants to ensure that EPA can conduct a robust review and analysis of the data.

- ESA reform for pesticides is necessary. When approving pesticides, FIFRA allows for cost-benefit balancing, recognizing that pesticides are effective precisely because they harm pests. However, the ESA does not allow for any consideration of the beneficial effects of pesticides. In order to meet ESA obligations, pesticide uses are severely restricted, leaving growers with limited tools for crop protection.

- New policies are needed to ensure that other program offices (such as ORD, OW, and OLEM) will defer to OPP on toxicity issues. OPP has rigorous testing requirements for pesticide ingredients and products to ensure before they go to market that their use will not harm human health and the environment. Assessments by other offices are redundant.

- While individual pesticide registrations are considered adjudications and not reviewed by the Office of Management and Budget (OMB), consistent with a 1993 OMB guidance, when pesticide tolerances and registrations are withdrawn by the agency (as opposed to being withdrawn voluntarily by registrants), these actions should undergo coordinated interagency review managed by OMB.

Budget

The Biden Administration has expanded the scope and breadth of regulatory actions with respect to OPPT and OPP, but both programs continue to maintain that resources are insufficient.

OPPT (chemicals) suffers from a lack of leadership and an inability to complete the most basic requirements efficiently and in a timely fashion. While EPA has asked for more resources, including higher industry fees, it is not clear that it has the capacity to use additional dollars efficiently.

With regard to OPP (pesticides), pesticide manufacturers feel that the program is underfunded and would like its budget to be increased so that pesticide actions can be reviewed more quickly. Manufacturers are also willing to pay higher fees to the fee-based portion of the program. However, grower groups have been disappointed by EPA's actions and have significant concerns about EPA's ability to conduct science-based risk assessments and take risk management actions that appropriately balance benefits and risks as required by FIFRA. Guardrails and third-party audits should be part of any funding increases through the Pesticide Registration Improvement Act (PRIA)[43] or other mechanisms.

OFFICE OF RESEARCH AND DEVELOPMENT (ORD) AND RELATED SCIENCE ACTIVITIES

While much of this work has not been authorized by law, EPA conducts a wide variety of intramural and extramural research, development, regulatory science,

science advisory, peer review, risk assessment, and risk management activities. This enterprise includes the Office of Research and Development (ORD), the agency's largest employer, as well as science activities across other key programs, regions, and cross-cutting parts of the Administrator's office. EPA's scientific enterprise, including ORD, has rightly been criticized for decades as precautionary, bloated, unaccountable, closed, outcome-driven, hostile to public and legislative input, and inclined to pursue political rather than purely scientific goals.

Needed Reforms: Day One Priorities

- Notify Congress that EPA will not conduct any ongoing or planned science activity for which there is not clear and current congressional authorization. This priority should be underscored in the President's first budget request.

- The new President's Inauguration Day regulatory review/freeze directives should avoid exceptions for EPA actions. This freeze should explicitly include quasi-regulatory actions, including assessments, determinations, standards, and guidance, that have failed to go through the notice-and-comment process and may date back years.

- Pause for review all contracts above $100,000 with a heavy focus on major external peer reviews and regulatory models.

- Call for the public to identify areas where EPA has inconsistently assessed risk, failed to use the best science, or participated in research misconduct.

- Eliminate the use of unauthorized regulatory inputs like the social cost of carbon, black box and proprietary models, and unrealistic climate scenarios, including those based on Representative Concentration Pathway (RCP) 8.5.

Personnel

- Quickly nominate a reform-minded Assistant Administrator for Research and Development.

- Appoint and empower a Science Adviser reporting directly to the Administrator in addition to a substantial investment (no fewer than six senior political appointees) charged with overseeing and reforming EPA research and science activities. Qualifications for these positions should emphasize management, oversight, and execution skills (including in leading state environmental agencies) as opposed to personal scientific output.

- Suspend and review the activities of EPA advisory bodies, many of which have not been authorized by Congress or lack independence, balance, and geographic and viewpoint diversity.

- Retract delegations for key science and risk-assessment decisions from Assistant Administrators, regional offices, and career officials.

- Eliminate the use of Title 42 hiring authority that allows ORD to spend millions in taxpayer dollars for salaries of certain employees above the civil service scale.

- Announce plans to streamline and reform EPA's poorly coordinated and managed laboratory structure.

Budget: Back-to-Basics Rejection of Unauthorized or Expired Science Activities

A top priority should be the immediate and consistent rejection of all EPA ORD and science activities that have not been authorized by Congress. In FY 2022, according to EPA's opaque budgeting efforts, science and technology activities totaled nearly $730 million. EPA's FY 2023 budget request for the Office of Research and Development seeks funds for more than 1,850 employees—a dramatic increase for what is already the largest EPA office with well above 10 percent of the agency's workforce.[44] ORD conducts a wide-ranging series of science and peer review activities, some in support of regulatory programs established by our environmental laws, but often lacks authority for these specific endeavors.

Several ORD offices and programs, many of which constitute unaccountable efforts to use scientific determinations to drive regulatory, enforcement, and legal decisions, should be eliminated. The Integrated Risk Information System, for example, was ostensibly designed by EPA to evaluate hazard and dose-response for certain chemicals. Despite operating since the 1980s, the program has never been authorized by Congress and often sets "safe levels" based on questionable science and below background levels, resulting in billions in economic costs. The program has been criticized by a wide variety of stakeholders: states; Congress; the National Academies of Science, Engineering, and Medicine (NASEM); and the U.S. Government Accountability Office (GAO), among others. EPA has failed to implement meaningful reforms, and this unaccountable program threatens key regulatory processes as well as the integrity of Clean Air Act and TSCA implementation.

Needed EPA Advisory Body Reforms

EPA currently operates 21 federal advisory committees.[45] These committees often play an outsized role in determining agency scientific and regulatory policy,

and their membership has too often been handpicked to achieve certain political positions. In the Biden Administration, key EPA advisory committees were purged of balanced perspectives, geographic diversity, important regulatory and private-sector experience, and state, local, and tribal expertise. Contrary to congressional directives and recommendations from the GAO and intergovernmental associations, these moves eviscerated historic levels of participation on key committees by state, local, and tribal members from 2017 to 2020. As a result, a variety of EPA regulations lack relevant scientific perspectives, increasing the risks of economic fallout and a failure of cooperative federalism. EPA also has repeatedly disregarded legal requirements regarding the role of these advisory committees and the scope of scientific advice on key regulations.[46]

Needed Science Policy Reforms

Instead of allowing these efforts to be misused for scaremongering risk communications and enforcement activities, EPA should embrace so-called citizen science and deputize the public to subject the agency's science to greater scrutiny, especially in areas of data analysis, identification of scientific flaws, and research misconduct. In addition, EPA should:

- Shift responsibility for evaluating misconduct away from its Office of Scientific Integrity, which has been overseen by environmental activists, and toward an independent body.

- Work (including with Congress) to provide incentives similar to those under the False Claims Act[47] for the public to identify scientific flaws and research misconduct, thereby saving taxpayers from having to bear the costs involved in expending unnecessary resources.

- Avoid proprietary, black box models for key regulations. Nearly all major EPA regulations are based on nontransparent models for which the public lacks access or for which significant costs prevent the public from understanding agency analysis.

- Reject precautionary default models and uncertainty factors. In the face of uncertainty around associations between certain pollutants and health or welfare endpoints, EPA's heavy reliance on default assumptions like its low-dose, linear non-threshold model bake orders of magnitude of risk into key regulatory inputs and drive flawed and opaque decisions. Given the disproportionate economic impacts of top-down solutions, EPA should implement an approach that defaults to less restrictive regulatory outcomes.

- Refocus its research activities on accountable real-world examinations of the efficacy of its regulations with a heavy emphasis on characterizing and better understanding natural, background, international, and anthropogenic contributions for key pollutants. It should embrace concepts laid out in the 2018 "Back-to-Basics Process for Reviewing National Ambient Air Quality Standards" memo[48] to ensure that any science and risk assessment for the NAAQS matches congressional direction.

Legislative Reforms

While some reforms can be achieved administratively (especially in areas where EPA clearly lacks congressional authorization for its activities), Congress should prioritize several EPA science activity reforms:

- Use of the Congressional Review Act for Congress to disapprove of EPA regulations and other quasi-regulatory actions and prohibit "substantially similar" actions in the future.

- Reform EPA's Science Advisory Board and other advisory bodies to ensure independence, balance, transparency, and geographic diversity.

- Build on recent bipartisan proposals to increase transparency for advisory bodies, subject to the Federal Advisory Committee Act[49] as well as recommendations from the Administrative Conference of the U.S., to strengthen provisions for independence, accountability, geographic diversity, turnover, and public participation. This should include a prohibition on peer review activities for unaccountable third parties that lack independence or application of these same principles to non-governmental peer review bodies (including NASEM).

- Add teeth to long-standing executive orders, memoranda, recommendations, and other policies to require that EPA regulations are based on transparent, reproducible science as well as that the data and publications resulting from taxpayer-funded activities are made immediately available to the public.

- Reject funds for programs that have not been authorized by Congress (like IRIS) as well as peer review activities that have not been authorized by Congress.

- Revisit and repeal or reform outdated environmental statutes. A high priority should be the repeal or reform of the Global Change Research Act of 1990,[50] which has been misused for political purposes.

- Repeal Inflation Reduction Act programs providing grants for environmental science activities.

AMERICAN INDIAN OFFICE (AIO)

AIO is a vital EPA function. It is mandated to carry out a 1992 act of Congress that administers the Indian Environmental General Assistance Program.[51] Because of the sovereign-to-sovereign relationship between the U.S. government and federally recognized sovereign Indian nations, this act's purpose is to assist tribes in developing the capacity to manage their own tribal environmental protection programs and set them up to implement programs for the management of solid and hazardous waste. This office also is the chief office under which the EPA's 1984 Indian Policy functions.

Needed Reforms

AIO should be significantly elevated as a stand-alone EPA Assistant Administrator office. This would send a clear message to American Indians and Alaska Native Villages that the agency takes seriously the environmental issues plaguing Indian Country. While designated a "headquarters" office with direct reporting to the Administrator, its location should be in the American West, closer to most tribal nations. This could include Oklahoma City, Oklahoma; Dallas, Texas; or Denver, Colorado. The state of Oklahoma is considered the tribal center of America and is home to 39 federally recognized tribes, including the "Five Civilized Tribes." The other two options are also close to numerous tribes and home to EPA regional offices.

New Policies

All EPA tribal grants and tribal matters should be run from this office as a one-stop-shop for all tribal affairs.

Budget and Personnel

AIO should be led by a politically appointed, Senate-confirmed Assistant Administrator, ideally one with strong ties to a federally recognized tribe. He or she should have political deputies and staff to assist the political leadership in carrying out agency policies.

Career EPA tribal staff are located throughout the nation in all regional offices but are paid mostly under the budget of the current Office of International and Tribal Affairs, which will be significantly restructured as international functions are reabsorbed into the appropriate media offices (for example, Air, Water, and Land and Emergency Management). Because of this, tribal staff should be fully under the authority of the new American Indian Office and its Assistant Administrator, not the regional offices.

OFFICE OF GENERAL COUNSEL (OGC)

OGC serves as the chief legal adviser to EPA's policymaking officials. It also provides legal support to regional actions and enforcement and compliance litigation. OGC lawyers represent the agency in court alongside the Department of Justice, typically defending agency actions.

Needed Reforms and New Policies

- **Review EPA's Environmental Justice and Title VI authority.** Wherever possible, the Biden Administration is broadening EPA's use and interpretation of Environmental Justice (EJ)[52] and Title VI of the Civil Rights Act of 1964[53] beyond long-standing understandings of the legal limits of that authority. As a threshold matter, there is an opportunity to redefine EJ as a tool for the agency to prioritize environmental protection efforts and assistance to communities in proximity to pollution or with the greatest need for additional protection. Allocations of agency resources, increased EPA enforcement, and/or agency distribution of grants should be based on neutral constitutional principles.

  In 2023, the Supreme Court is expected to provide guidance on the constitutionality of race-based discrimination as it considers *Students for Fair Admissions v. University of North Carolina*.[54] Accordingly, the next Administration should pause and review all ongoing EJ and Title VI actions to ensure that they are consistent with any forthcoming SCOTUS decision.

- **Establish a policy of legally speaking with one voice.** Some EPA offices (for example, the Office of Enforcement and Compliance Assurance and the Offices of Regional Counsel) assert legal positions and interpretations of the law that conflict with an Administration's interpretation as articulated by OGC with input from program offices. It is unacceptable for the agency to have inconsistent legal positions, particularly with respect to key interpretative issues. All attorneys with authority to represent EPA—not necessarily all attorneys—should therefore be housed in OGC. These offices include:

  1. **The Office of Enforcement and Compliance Assurance (OECA).** OECA was established during the Clinton Administration. Enforcement attorneys tend to take legal positions to win cases or obtain settlements that may be inconsistent with those of OGC and program offices. OECA attorneys should be moved into OGC. Additionally, non-attorney program staff in OECA could be moved into their relevant program offices (for example, the Clean Air Act Enforcement Advisor could

be moved into OAR). Beyond the avoidance of inconsistent legal positions, this policy would reduce the agency's overall expenditures and duplication of work. To accommodate this new function, OGC could establish a new Deputy General Counsel for Enforcement position to manage the enforcement attorneys at headquarters and in the regions.

2. **The Office of Congressional and Intergovernmental Affairs (OCIR).** OCIR employees should not take legal positions. In all Administrations, White House Counsel is key with respect to oversight issues and has an important relationship with OGC. There must be a strategic relationship between OCIR and OGC, but OGC, in consultation with agency clients and White House Counsel, should assert EPA legal positions to Congress (for example, the assertion of interests regarding congressional subpoenas, witness availability and testimony, and document production).

3. **The Office of Environmental Justice and External Civil Rights (OEJECR).** OEJECR was established during the Biden Administration. EJ and civil rights functions were taken from OGC and moved into a stand-alone office as well as spread through the regions. OEJECR should be disbanded; OEJECR's attorneys should be moved back into OGC; and nonlegal staff (for example, EJ Policy Advisers) should be moved back into the Administrator's office as is customary.

4. **The Offices of Regional Counsel (ORCs).** Regional EJ staff efforts, both in the ORCs and in the policymaking offices, are highly variable. EPA is therefore likely to take inconsistent legal positions. To the extent that legal positions are taken by the ORCs and/or regional staff, they should be coordinated and approved by OGC and the appropriate regional leadership. For example, nearly all regional offices have EJ Action Plans and/or EJ Implementation Plans. Region 1's EJ Action Plan is six pages, and Region 2's is 66 pages. The Region 2 EJ Action Plan, for example, specifies that "ORC will conduct EJ training for all legal staff...to provide attorneys with a simple standard EJ analysis they can use regardless of the context—enforcement, grants, permits, referrals, etc.—of the case."[55]

In addition, EPA should refrain from publicly undermining the National Environmental Policy Act (NEPA)[56] process at other agencies and should instead focus on providing constructive, technical support during the interagency process.

Personnel

- Review OGC resources to consider reorganization of other attorney functions and leadership for consolidation into a Cross-Cutting Issues Law Office.
- Review telework policies and attorneys with permanent duty stations not at EPA headquarters or a regional office.
- Consider invoking the rotation of SES managers within OGC and ORCs to other EPA offices where appropriate.
- Monitor all external communications conveying a legal position.
- Do not allow public events at which the agency puts forth its legal position unless they are specifically approved (for example, agency webinars on sensitive issues).

Budget

OGC's budget will increase with consolidation of FTE funding that follows attorneys who come from other EPA offices.

- Reassess duplicative skill sets with the consolidation and allow for attrition if needed.
- Consider allocated resources for regional recruiting to increase geographic diversity from law schools from each state.

OFFICE OF MISSION SUPPORT (OMS)

OMS leads the agency's core mission support functions to improve efficiency, coordination, and customer experience for internal customers, stakeholders, and the public, including protection of EPA's facilities and other critical assets nationwide, acquisition activities (contracts), grants management, human capital, information technology, and information management activities.

Grant Reform

EPA now awards up to $30 billion in grants annually—up to half of the agency's annual budget. Of these funds, $500 million is awarded as discretionary. This grantmaking—discretionary and otherwise—is driven by ideology instead of need. Of particular concern is a practice whereby numerous small-dollar grants are administered to a great number of grantees while larger grants are given to academic institutions. As a result, grant funds produce little to no meaningful improvements in the environment and public health and instead fund questionably

relevant projects at elite, private academic institutions that invariably produce radical environmental research.

Steps should be taken to ensure that grants are awarded based on need instead of ideological affiliation or academic preference. Specifically, EPA should:

- Institute a pause and review for all grants over a certain threshold.
- Put a political appointee in charge of the grants office to prioritize distribution of grants to those who are most in need and toward projects that will tangibly improve the environment.
- Cap the number and dollar amounts of grants that the Office of Research and Development can award and require that they be reviewed by the Administrator's office.

OFFICE OF THE CHIEF FINANCIAL OFFICER (OCFO)

OCFO formulates and manages EPA's annual budget and performance plan, coordinates EPA's strategic planning efforts, develops EPA's annual Performance and Accountability Report, and implements the Government Performance and Results Act.[57]

Needed Reforms

EPA has been audited by the agency's Inspector General for decades, well beyond accepted norms for private-sector financial audits. Audit teams should be diversified. Staffing assignments, especially at the senior level, should be reviewed and streamlined, and the office should consolidate space to save agency costs. For example, six offices need six security contracts to protect employees when one contract would suffice.

New Policies

Review travel and reimbursement policies for best practices aligned for industry norms.

Personnel

The Deputy Chief Financial Officer position is currently reserved for a career official, but political appointees may serve as Associate CFO, Special Advisor, and other senior officials. In addition to evaluating whether the Deputy Chief Financial Officer position should be reserved for a career official, a new Administration should immediately fill these positions with political appointees and establish a new political leadership position for Appropriations Liaison, which is currently overseen by career employees.

Budget

OCFO is responsible for drafting and sharing the President's budget with Congress. The CFO often testifies along with the Administrator. Efforts to simplify the budget request could improve the overall transparency and general understanding of the agency's work.

CONCLUSION

A more conservative EPA that aligns with the policies outlined in this chapter will lead to a better environmental future without unintended consequences. It will prevent unnecessary expenditures by the regulated community, allowing for investment in economic development and job creation, which are keys to thriving communities. Cutting EPA's size and scope will deliver savings to the American taxpayer. Improved transparency will serve as an important check to ensure that the agency's mission is not distorted or coopted for political gain. Importantly, a conservative EPA will deliver tangible environmental improvements to the American people in the form of cleaner air, cleaner water, and healthier soils.

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14

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Roger Severino

If the U.S. Department of Health and Human Services (HHS) were a separate country, its approximately $1.6 trillion budget would rank as the world's fifth-largest national budget. For good or ill, HHS activities personally impact the lives of more Americans than do those of any other federal agency. Under President Trump, HHS was dedicated to serving "all Americans from conception to natural death, including those individuals and families who face...economic and social well-being challenges."[1] Under President Biden, the mission has shifted to "promoting equity in everything we do" for the sake of "populations sharing a particular characteristic" including race, sexuality, gender identification, ethnicity, and a host of other categories.[2]

As a result of HHS's having lost its way, U.S. life expectancy, instead of returning to normal after the COVID-19 pandemic, continued to drop precipitously to levels not seen since 1996 with white populations alone losing 7 percent of their expected life span in just one year.[3] Nothing less than America's long-term survival is at stake. Accordingly, HHS must return to serving the health and well-being of all Americans at all stages of life instead of using social engineering that leaves us sicker, poorer, and more divided.

OVERVIEW

HHS consists of 11 operating divisions that have varying degrees of practical independence from the Secretary of Health and Human Services and 15 staff divisions that are directly under the Office of the Secretary. This chapter's recommendations are limited to those divisions that most need reform and address, wherever possible, five cross-cutting goals.

Goal #1: Protecting Life, Conscience, and Bodily Integrity. The Secretary should pursue a robust agenda to protect the fundamental right to life, protect conscience rights, and uphold bodily integrity rooted in biological realities, not ideology.

From the moment of conception, every human being possesses inherent dignity and worth, and our humanity does not depend on our age, stage of development, race, or abilities. The Secretary must ensure that all HHS programs and activities are rooted in a deep respect for innocent human life from day one until natural death: Abortion and euthanasia are not health care.

A robust respect for the sacred rights of conscience, both at HHS and among governments and institutions funded by it, increases choices for patients and program beneficiaries and furthers pluralism and tolerance. The Secretary must protect Americans' civil rights by ensuring that HHS programs and activities follow the letter and spirit of religious freedom and conscience-protection laws.

Radical actors inside and outside government are promoting harmful identity politics that replaces biological sex with subjective notions of "gender identity" and bases a person's worth on his or her race, sex, or other identities. This destructive dogma, under the guise of "equity," threatens American's fundamental liberties as well as the health and well-being of children and adults alike. The next Secretary must ensure that HHS programs protect children's minds and bodies and that HHS programs respect parents' basic right to direct the upbringing, education, and care of their children.

Goal #2: Empowering Patient Choices and Provider Autonomy. Basic economics holds that costs tend to decrease and quality and options tend to increase when there is robust and free competition in the provision of goods and services. Health care is no exception. Health care reform should be patient-centered and market-based and should empower individuals to control their health care–related dollars and decisions.

Of course, providers who deliver health care also need the freedom to address the unique needs of their patients. States should be the primary regulators of the medical profession, and the federal government should not restrict providers' ability to discharge their responsibilities or limit their ability to innovate through government pricing controls or irrational Medicare and Medicaid reimbursement schemes.

Finally, America's broken insurance system, run largely through confusing provider networks and third-party payers (employers), induces overconsumption of health care, limits consumer shopping, and hides true costs from patients.

The federal government should focus reform on reducing burdens of regulatory compliance, unleashing innovation in health care delivery, ceasing interference in the daily lives of patients and providers, allowing alternative insurance coverage options, and returning control of health care dollars to patients making decisions with their providers about their health care treatments and services.

Goal #3: Promoting Stable and Flourishing Married Families. Families comprised of a married mother, father, and their children are the foundation of a well-ordered nation and healthy society. Unfortunately, family policies and programs under President Biden's HHS are fraught with agenda items focusing on "LGBTQ+ equity," subsidizing single-motherhood, disincentivizing work, and penalizing marriage. These policies should be repealed and replaced by policies that support the formation of stable, married, nuclear families.

Working fathers are essential to the well-being and development of their children, but the United States is experiencing a crisis of fatherlessness that is ruining our children's futures. In the overwhelming number of cases, fathers insulate children from physical and sexual abuse, financial difficulty or poverty, incarceration, teen pregnancy, poor educational outcomes, high school failure, and a host of behavioral and psychological problems. By contrast, homes with non-related "boyfriends" present are among the most dangerous place for a child to be. HHS should prioritize married father engagement in its messaging, health, and welfare policies.

In the context of current and emerging reproductive technologies, HHS policies should never place the desires of adults over the right of children to be raised by the biological fathers and mothers who conceive them. In cases involving biological parents who are found by a court to be unfit because of abuse or neglect, the process of adoption should be speedy, certain, and supported generously by HHS.

Goal #4: Preparing for the Next Health Emergency. The COVID-19 pandemic demonstrated how catastrophic a micromanaging, misinformed, centralized, and politicized federal government can be. Basic human rights, medical choice, and the doctor–patient relationship were trampled without scientific justification and for extended periods of time. Excess deaths, not due to COVID-19, skyrocketed because of forced lockdowns, isolation, vaccine-related mass firings, and colossal disruptions of the economy and daily rhythms of life.

The federal government's public health apparatus has lost the public's trust. Before the next national public health emergency, this apparatus must be fundamentally restructured to ensure a transparent, scientifically grounded, and more nimble, efficient, transparent, and targeted response that respects the unique needs and input of patient populations and providers.

Every one of the overreaching policies during the pandemic—from lockdowns and school closures to mask and vaccine mandates or passports—received its supposed legal justification from the state of emergency declared (and renewed) by the HHS Secretary. Tellingly, however, the threshold for what constitutes a public health emergency—how many cases, hospitalizations, deaths, etc.—was never defined. For the sake of democratic accountability, we must know with clarity what will trigger the next emergency declaration and, just as important, what will trigger its end.

Unaccountable bureaucrats like Anthony Fauci should never again have such broad, unchecked power to issue health "guidelines" that will certainly be the basis for federal and state mandates. Never again should public health bureaucrats be allowed to hide information, ignore information, or mislead the public concerning the efficacy or dangers associated with any recommended health interventions because they believe it may lead to hesitancy on the part of the public. The only way to restore public trust in HHS as an institution capable of acting responsibly during a health emergency is through the best of disinfectants—light.

Goal #5: Instituting Greater Transparency, Accountability, and Oversight. The next Administration should guard against the regulatory capture of our public health agencies by pharmaceutical companies, insurers, hospital conglomerates, and related economic interests that these agencies are meant to regulate. We must erect robust firewalls to mitigate these obvious financial conflicts of interest.

All National Institutes of Health, Centers for Disease Control and Prevention, and Food and Drug Administration regulators should be entirely free from private biopharmaceutical funding. In this realm, "public–private partnerships" is a euphemism for agency capture, a thin veneer for corporatism. Funding for agencies and individual government researchers must come directly from the government with robust congressional oversight.

We must shut and lock the revolving door between government and Big Pharma. Regulators should have a long "cooling off period" on their contracts (15 years would not be too long) that prevents them from working for companies they have regulated. Similarly, pharmaceutical company executives should be restricted from moving from industry into positions within regulatory agencies.

Finally, HHS should adopt metrics across the agency that can objectively determine the extent to which the agency's policies and programs achieve desired health and welfare outcomes (not agency outputs). What is not measured is not achieved.

CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)

COVID and Structural Reform. COVID-19 exposed the Centers for Disease Control and Prevention (CDC) as perhaps the most incompetent and arrogant agency in the federal government. CDC continually misjudged COVID-19, from its lethality, transmissibility, and origins to treatments. We were told masks were not needed; then they were made mandatory. CDC botched the development of COVID tests when they were needed most. When it was too late, we were told to put our lives on hold for "two weeks to flatten the curve;" that turned into two years of interference and restrictions on the smallest details of our lives. Congress should ensure that CDC's legal authorities are clearly defined and limited to prevent a recurrence of any such arbitrary and vacillating exercise of power.

The CDC should be split into two separate entities housing its two distinct functions. On the one hand, the CDC is now responsible for collecting, synthesizing,

and publishing epidemiological data from the individual states—a scientific data-gathering function. This information is crucial for medical and public health researchers around the country. On the other hand, the CDC is also responsible for making public health recommendations and policies—an inescapably political function. At times, these two functions are in tension or clear conflict. In February 2022, for example, it was reported that "[t]wo full years into the pandemic, the agency leading the country's response to the public health emergency has published only a tiny fraction of the data it has collected," much of which "could [have helped] state and local health officials better target their efforts to bring the virus under control." A CDC spokesman said that one of the reasons was "fear that the information might be misinterpreted."[4]

These distinct functions should be separated into two entirely separate agencies with a firewall between them. We need a national epidemiological agency responsible only for publishing data and required by law to publish all of the data gathered from states and other sources. A separate agency should be responsible for public health with a severely confined ability to make policy recommendations. The CDC can and should make assessments as to the *health* costs and benefits of health interventions, but it has limited to no capacity to measure the *social* costs or benefits they may entail. For example, how much risk mitigation is worth the price of shutting down churches on the holiest day of the Christian calendar and far beyond as happened in 2020? What is the proper balance of lives saved versus souls saved? The CDC has no business making such inherently political (and often unconstitutional) assessments and should be required by law to stay in its lane.

The CDC's initial COVID-19 testing failures were largely the result of that agency's prioritizing its own development and production of tests using its internal staff and facilities. The private sector is much better positioned to tackle the challenges inherent in developing and manufacturing novel products, as illustrated by the relative success of the alternative approach to facilitating the development of COVID-19 vaccines and therapeutics by private companies that was adopted by the Food and Drug Administration (FDA).

When it comes to testing, the CDC's role should similarly be to facilitate rather than supplant the efforts of private test developers, academic laboratories, state public health laboratories, and clinical testing providers. When responding to a novel pathogen, the CDC should focus on gathering and disseminating information, including specimens needed for development of positive controls and reference panels, and ensuring that test developers can develop and validate diagnostic tests. These changes will require a shift in priorities and culture at the CDC—and throughout HHS more broadly.[5]

Most problematically, the CDC presented itself as a kind of "super-doctor" for the entire nation. The CDC is a public health institution, not a medical institution. According to its mission statement, the agency focuses on "disease prevention and

control, environmental health, and health promotion and health education activities."[6] It is not qualified to offer (and usually does not purport to offer) professional medical opinions applicable to specific patients.

From time to time, the CDC offers findings and recommendations that competent medical practitioners often will consider in arriving at a professional medical judgment for a particular patient. In this respect, CDC guidelines are analogous to guidelines from other public health associations or medical societies: They are informative, not prescriptive.

By statute or regulation, CDC guidance must be prohibited from taking on a prescriptive character. For example, never again should CDC officials be allowed to say in their official capacity that school children "should be" masked or vaccinated (through a schedule or otherwise) or prohibited from learning in a school building. Such decisions should be left to parents and medical providers. We have learned that when CDC says what people "should" do, it readily becomes a "must" backed by severe punishments, including criminal penalties. CDC should report on the risks and effectiveness of all infectious disease-mitigation measures dispassionately and leave the "should" and "must" policy calls to politically accountable parties.

Conflicts of Interest. There was a time when the CDC could not take money from the pharmaceutical industry, but in 1992, the agency discovered a loophole in federal law that allowed it to accept pharma contributions through the nonprofit CDC Foundation. The money started flowing immediately: From 2014 through 2018, the CDC Foundation received $79.6 million from pharmaceutical corporations like Pfizer, Biogen, and Merck.[7] This practice presents a stark conflict of interest that should be banned.

Data Systems. The COVID-19 pandemic has revealed the disastrous public health consequences of the CDC's failure to follow multiple congressional mandates to modernize its data infrastructure. Current reporting methods are burdensome for frontline medical workers, yet they result only in fragmented data that are not available in real time or usable across systems.

Congress should require HHS to prioritize the electronic collection and dissemination of robust, privacy-protected data that better leverages existing systems while reducing burdens on clinicians. HHS should also enter into a public–private partnership with a data-management expert to develop a system that makes critical information available to health care workers and policymakers in real time.[8]

The CDC operates several programs related to vaccine safety including the Vaccine Adverse Event Reporting System (VAERS); Vaccine Safety Datalink (VSD); and Clinical Immunization Safety Assessment (CISA) Project. Those functions and their associated funding should be transferred to the FDA, which is responsible for post-market surveillance and evaluation of all other drugs and biological products.

Respect for Life and Conscience. The CDC should eliminate programs and projects that do not respect human life and conscience rights and that undermine

family formation. It should ensure that it is not promoting abortion as health care. It should fund studies into the risks and complications of abortion and ensure that it corrects and does not promote misinformation regarding the comparative health and psychological benefits of childbirth versus the health and psychological risks of intentionally taking a human life through abortion.

The CDC oversaw and funded the development and testing of the COVID-19 vaccines with aborted fetal cell lines, insensitive to the consciences of tens of thousands to hundreds of thousands of people who objected to taking a vaccine with such a link to abortion. As evidenced by litigation across the country, it is likely that thousands were fired unjustly because of the exercise of their consciences or faith on this question, which could have been avoided with a modicum of concern for this issue from CDC. There is never any justification for ending a child's life as part of research, and the research benefits from splicing or growing aborted fetal cells and aborted baby body parts can easily be provided by alternative sources. All such research should be prohibited as a matter of law and policy.

CDC should update its public messaging about the unsurpassed effectiveness of modern fertility awareness–based methods (FABMs) of family planning and stop publishing communications that conflate such methods with the long-eclipsed "rhythm" or "calendar" methods. CDC should fund studies exploring the evidence-based methods used in cutting-edge fertility awareness.

Data Collection. The CDC's abortion surveillance and maternity mortality reporting systems are woefully inadequate. CDC abortion data are reported by states on a voluntary basis, and California, Maryland, and New Hampshire do not submit abortion data at all. Accurate and reliable statistical data about abortion, abortion survivors, and abortion-related maternal deaths are essential to timely, reliable public health and policy analysis.

Because liberal states have now become sanctuaries for abortion tourism, HHS should use every available tool, including the cutting of funds, to ensure that every state reports exactly how many abortions take place within its borders, at what gestational age of the child, for what reason, the mother's state of residence, and by what method. It should also ensure that statistics are separated by category: spontaneous miscarriage; treatments that incidentally result in the death of a child (such as chemotherapy); stillbirths; and induced abortion. In addition, CDC should require monitoring and reporting for complications due to abortion and every instance of children being born alive after an abortion. Moreover, abortion should be clearly defined as *only* those procedures that intentionally end an unborn child's life. Miscarriage management or standard ectopic pregnancy treatments should never be conflated with abortion.

Comparisons between live births and abortion should be tracked across various demographic indicators to assess whether certain populations are targeted by

abortion providers and whether better prenatal physical, mental, and social care improves infant outcomes and decreases abortion rates, especially among those who are most vulnerable.

The Ensuring Accurate and Complete Abortion Data Reporting Act of 2023[9] would amend title XIX of the Social Security Act and Public Health Service Act to improve the CDC's abortion reporting mechanisms by requiring states, as a condition of federal Medicaid payments for family planning services, to report streamlined variables in a timely manner.

The CDC should immediately end its collection of data on gender identity, which legitimizes the unscientific notion that men can become women (and vice versa) and encourages the phenomenon of ever-multiplying subjective identities.

FOOD AND DRUG ADMINISTRATION (FDA)

The FDA's mission includes ensuring the safety and efficacy of drugs, biological products, and medical devices.

Federal Laws That Shield Big Pharma from Competition. Because generics generally cost far less than brand-name drugs, consumers begin to save money as soon as a generic product comes on the market. The vast majority are very affordable with 93 percent of generic products costing $20 or less.

Savings would be even higher under proposals that prevent brand-name manufacturers from slowing down or impeding the entrance of generic products into the marketplace. Specifically, the FDA should prohibit pharmaceutical companies from purposely sitting on their legally available right to be the first to sell generic versions of their drugs. Additionally, Congress should create legal remedies for generic companies to obtain samples of brand-name products for their generic development efforts and should prohibit meritless "citizen petitions" submitted by manufacturers to delay approval of a generic competitor.[10]

Approval Process for Laboratory-Developed or Modified Medical Tests. Learning from the failed early COVID-19 testing experience, Congress and the FDA should focus on reforming laws and regulations governing medical tests, especially with respect to laboratory-developed tests.

Commercial tests are developed with the intention of being widely marketed, distributed, and used, while laboratory-developed tests are created with the intention of being used solely within one laboratory. A test developed by a lab in accordance with the protocols developed by another lab (non-commercial sharing) currently constitutes a "new" laboratory-developed test because the lab in which it will be used is different from the initial developing lab. To encourage interlaboratory collaboration and discourage duplicative test creation (and associated regulatory and logistical burdens), the FDA should introduce mechanisms through which laboratory-developed tests can easily be shared with other laboratories without the current regulatory burdens.[11]

The "laboratory-developed tests" category currently encompasses a range of possible tests, many of which would be characterized more appropriately as "laboratory-modified tests" because they are not truly novel tests but rather modified versions of existing tests. To avoid stifling innovation and access to medical care, the applicable statutes and regulations should be revised to facilitate greater access to such modified tests.[12]

Finally, the FDA has long held that it has regulatory authority over such tests, while others have argued that they should be considered clinical services regulated by the Centers for Medicare and Medicaid Services (CMS). The FDA currently has regulatory authority over in vitro diagnostics, and under the Clinical Laboratory Improvement Amendments (CLIA),[13] the CMS ensures that labs meet analytical validity standards for test methods. Congress, the FDA, and the CMS need to clarify and disentangle overlapping authorities over tests to eliminate regulatory confusion.[14]

Drug Shortages. The very thin profit margins and the regulatory burdens associated with generic drug manufacturing discourage inventory and capacity investments by manufacturers and contribute to drug shortages. HHS and the FDA should encourage more dependable generic drug manufacturing.

The FDA should expand its current pass/fail approach to drug facility inspections into a graded system that recognizes manufacturers that exceed minimum standards by investing in improving production reliability. The FDA should also add facility codes to drug packaging and construct a searchable database that cross-references product codes and facility codes. That would enable wholesalers and pharmacy benefit managers to identify and preference drugs manufactured at more reliable facilities, thus encouraging generic drug manufacturers to compete on reliability as well as on price.

For its part, HHS should exempt multi-source generic drugs from requirements to pay rebates to Medicaid and other federally funded health programs, as those provisions penalize new investments in expanding manufacturing capacity when supply is unable to meet demand.[15] Additionally, FDA and NIH should promote efficacy trials of new applications for generic drugs, which might include NIH funding such trials or conducting its own.

Abortion Pills. Abortion pills pose the single greatest threat to unborn children in a post-*Roe* world. The rate of chemical abortion in the U.S. has increased by more than 150 percent in the past decade; more than half of annual abortions in the U.S. are chemical rather than surgical.

The abortion pill regimen is typically a two-part process. The first pill, mifepristone, causes the death of the unborn child by cutting off the hormone progesterone, which is required to sustain a pregnancy. The second pill, misoprostol, causes contractions to induce a delivery of the dead child and uterine contents, usually into a toilet at home. The abortion-pill regimen is currently approved for up to 70 days

(10 weeks) into pregnancy and before Biden was subject to a heightened safety restriction called a Risk Evaluation and Mitigation Strategy (REMS) that requires an in-person visit with a physician who can check for dangerous contraindications such as ectopic pregnancies and can advise the mother seeking an abortion of the risks of chemical abortion, including hemorrhaging, and what to do in such circumstances. Chemical abortion has been found to have a complication rate four times higher than that of surgical abortion.

Since its approval more than 20 years ago, mifepristone has been associated with 26 deaths of pregnant mothers, over a thousand hospitalizations, and thousands more adverse events, but that number does not account for all complications. Of course, this does not count the hundreds of thousands to millions of babies whose lives have been unjustly taken through chemical abortion. FDA should therefore:

- **Reverse its approval of chemical abortion drugs because the politicized approval process was illegal from the start.** The FDA failed to abide by its legal obligations to protect the health, safety, and welfare of girls and women. It never studied the safety of the drugs under the labeled conditions of use, ignored the potential impacts of the hormone-blocking regimen on the developing bodies of adolescent girls, disregarded the substantial evidence that chemical abortion drugs cause more complications than surgical abortions, and eliminated necessary safeguards for pregnant girls and women who undergo this dangerous drug regimen. Furthermore, at no point in the past two decades has the FDA ever acknowledged or addressed federal laws that prohibit the distribution of abortion drugs by postal mail; to the contrary, the FDA has permitted and actively encouraged such activity.

  Now that the Supreme Court has acknowledged that the Constitution contains no right to an abortion, the FDA is ethically and legally obliged to revisit and withdraw its initial approval, which was premised on pregnancy being an "illness" and abortion being "therapeutically" effective at treating this "illness." The FDA is statutorily charged with guaranteeing the safety and efficacy of drugs and therefore should withdraw this drug that is proven to be dangerous to women and *by definition* fatally unsafe for unborn children.

As an interim step, the FDA should immediately restore the REMS by removing the in-person dispensing requirement to eliminate dangerous tele-abortion and abortion-by-mail distribution.

Mail-Order Abortions. Allowing mail-order abortions is a gift to the abortion industry that allows it to expand far beyond brick-and-mortar clinics and into

pro-life states that are trying to protect women, girls, and unborn children from abortion. The FDA should therefore:

- **Reinstate earlier safety protocols for Mifeprex that were mostly eliminated in 2016 and apply these protocols to any generic version of mifepristone.** A bare-minimum policy of limiting abortion pills to the pre-2016 policy of 49 days gestation, returning to the pre-2021 in-person dispensing requirement, and returning to requiring prescribers to report all serious adverse events, not just deaths, to the drug sponsor would increase women's health and safety.

- **Address weaknesses in the current FAERS (FDA Adverse Events Reporting System).** The Administration and policymakers should ensure that health care workers, particularly those in hospitals and emergency rooms, report abortion pill complications. Women who experience complications from abortion pills typically go to an emergency room, not to the abortion pill prescriber, so putting the onus of reporting on the prescriber who typically has no idea that a complication has occurred means that the FAERS is seriously undercounting adverse events. Submitting an adverse event to the database should be a quick and efficient process for busy health care practitioners. Currently, providers report that the process is difficult and convoluted.

- **Implement a policy of transparency about inspections of the abortion pill's sponsors, Danco and GenBioPro, as well as facilities that manufacture the pills.** The FDA should respond to congressional requests and Freedom of Information Act (FOIA) requests about inspections, compliance, and post-marketing safety in a timely manner.

- **Stop promoting or approving mail-order abortions in violation of long-standing federal laws that prohibit the mailing and interstate carriage of abortion drugs.**[16]

Vaccine Importation. Thousands of Americans of faith and conscience wish to receive various childhood vaccinations for themselves and their families but are not allowed to receive vaccines that are derived through or tested on aborted fetal cells. For example, the chickenpox, Hepatitis, and MMR vaccines in the U.S. are all linked to abortion in this way. There are ethically derived alternatives abroad that have been used safely there for decades, but the FDA makes it exceedingly difficult for Americans to import them.

In January 2021, the HHS Office for Civil Rights (OCR) and the FDA jointly announced that HHS was required by the Religious Freedom Restoration Act

(RFRA)[17] to allow bulk importation by doctors of certain Japanese-made vaccines to accommodate religious needs of patients, but the Biden FDA unlawfully revoked this waiver. The FDA should restore the waiver to comply with RFRA and for the obvious public health benefits of increased childhood vaccination by families seeking ethically derived alternatives.

To avoid future moral coercion of the sort experienced with the COVID-19 vaccines, the FDA and NIH should require the development of drugs and biologics that are free from moral taint and switch to cell lines that are not derived from aborted fetal cell lines or aborted baby body parts.

Conflicts of Interest. A 2018 report in *Science* found that more than two-thirds of FDA reviewers later ended up at the same companies whose products they had been reviewing while they were working for the government.[18] This revolving door is one mechanism by which pharmaceutical companies capture the agencies that regulate them. The FDA should impose a lengthy cooling off period for reviewers, preventing them from working for companies they regulated.

In 1997, the FDA relaxed regulations to permit broadcast drug advertisements, after which Big Pharma began routine direct-to-consumer advertising, making the United States and New Zealand the only countries where such practices are legal. Following the 1997 changes, pharma became the largest advertiser for all major media organizations. This buys considerable influence in the newsroom—whether media companies acknowledge this or not—and distorts independent reporting on public health issues. The FDA or Congress should regulate where and how paid advertising is used by pharmaceutical companies more stringently, especially on media outlets.

NATIONAL INSTITUTES OF HEALTH (NIH)

The National Institutes of Health (NIH) is the world's largest biomedical research agency and is made up of 27 different components called Institutes and Centers. Despite its popular image as a benign science agency, NIH was responsible for paying for research in aborted baby body parts, human animal chimera experiments, and gain-of-function viral research that may have been responsible for COVID-19.

Bioethics Reform. Research using fetal tissue obtained from elective abortions is immoral and obsolete. Research using human embryonic stem cells also involves the destruction of human life and should not be subsidized with taxpayer dollars. Good science and life-affirming, ethical research are not mutually exclusive. In fact, ethically derived sources such as discarded surgical tissue and adult stem cells (made pluripotent), not tissue obtained from elective abortions, have contributed the most successful treatments for a variety of ailments.

Congress authorized HHS to choose not to fund extramural abortion-derived fetal tissue research that fails ethics advisory board review, and in 2019, the

Trump Administration's HHS chose that course. Subsequently, however, the Biden Administration restored unrestricted funding of abortion-derived fetal tissue research. HHS should:

- **Promptly restore the ethics advisory committee to oversee abortion-derived fetal tissue research, and Congress should prohibit such research altogether.**

- **End intramural research projects using tissue from aborted children within the NIH, which should end its human embryonic stem cell registry.**

- **Aggressively implement a plan to pursue and fund ethical alternative methods of research in order to ensure that abortion and embryo-destructive related research, cell lines, and other testing methods become both fully obsolete and ethically unthinkable.**

In addition, the Administration should reconvene a new National Council on Bioethics (NCB) to discuss new and emerging areas of ethical concern, to assess whether the ends justify the means when it comes to the promise of therapies and cures, and to establish what limiting principles should guide research and health policy. Because the male–female dyad is essential to human nature and because every child has a right to a mother and father, three-parent embryo creation and human cloning research should be banned. A new NCB should convene leading experts to examine these issues and provide policy recommendations for the new frontier of bioethical questions that our country will have to address in the coming years.

Finally, HHS should create and promote a research agenda that supports pro-life policies and explores the harms, both mental and physical, that abortion has wrought on women and girls.

Conflicts of Interest. NIH maintains inappropriate industry ties that create serious conflicts of interest. In 2018, it was revealed that a $100 million NIH study on the benefits of moderate drinking was funded by the beer and liquor industry.[19] More recently, the National Institute of Allergy and Infectious Diseases (NIAID), Anthony Fauci's division of the NIH, owns half of the patent for the Moderna COVID-19 vaccine, among thousands of other pharma patents.[20] Rather than providing grants to university-based investigators to run the clinical trials on their own Moderna vaccine, the NIH conducted this research internally—a clear conflict of interest. The NIAID will earn millions from this vaccine's revenue with several NIH employees (and their heirs) personally receiving up to $150,000 annually from Moderna vaccine sales.[21]

In May 2022, documents obtained pursuant to a FOIA request revealed that NIH Director Francis Collins, NAIAD Director Anthony Fauci, and Fauci's Deputy Director, Clifford Lane, all received royalties from pharmaceutical companies between 2009 and 2014.[22] Nonprofit watchdog Open the Books estimates that from 2010 to 2020, third parties paid more than $350 million in royalties to NIH and its scientists, who are credited as coinventors. Most problematically, in the years when they received payments, Collins, Fauci, and Lane were NIH administrators, not researchers, with no plausible claim to be scientific co-discoverers.

Most of the world's other advanced science countries have stricter prohibitions on such conflicts, which helps to explain why the most significant studies on COVID treatments, on natural immunity, and on vaccine efficacy have come mostly from outside the U.S.

Funding for scientific research should not be controlled by a small group of highly paid and unaccountable insiders at the NIH, many of whom stay in power for decades. The NIH monopoly on directing research should be broken. Term limits should be imposed on top career leaders at the NIH, and Congress should consider block granting NIH's grants budget to states to fund their own scientific research. Nothing in this system would prevent several states from partnering to co-fund large research projects that require greater resources or impact larger regions. Likewise, the establishment of funding for scientific research at the state level does not preclude more modest federal funding through the National Institutes of Health: The two models are not mutually exclusive.

The CDC and NIH Foundations, whose boards are populated with pharmaceutical company executives, need to be decommissioned. Private donations to these foundations—a majority of them from pharmaceutical companies—should not be permitted to influence government decisions about research funding or public health policy.

Woke Policies. Under Francis Collins, NIH became so focused on the #MeToo movement that it refused to sponsor scientific conferences unless there were a certain number of women panelists, which violates federal civil rights law against sex discrimination. This quota practice should be ended, and the NIH Office of Equity, Diversity, and Inclusion, which pushes such unlawful actions, should be abolished.

NIH has been at the forefront in pushing junk gender science. Instead, it should fund studies into the short-term and long-term negative effects of cross-sex interventions, including "affirmation," puberty blockers, cross-sex hormones and surgeries, and the likelihood of desistence if young people are given counseling that does not include medical or social interventions.

CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS)

With the goal of being a societal safety net, Medicare and Medicaid touch more American lives than does any other federal program. While they help many, they

operate as runaway entitlements that stifle medical innovation, encourage fraud, and impede cost containment, in addition to which their fiscal future is in peril.

Both programs should be managed so that the individuals enrolled are empowered to make decisions for themselves and have quality options with affordable prices driven by competition and innovation. Providers who participate should retain (or have restored) the freedom to practice medicine and take care of their patients according to their patients' unique needs.

Medicare. Medicare should be reformed according to four goals and principles:

- **Increase Medicare beneficiaries' control of their health care.** Patients are best positioned to determine the value of health care services, working with their health care providers. They also benefit from increased choice of doctors, hospitals, and insurance plans. Access to reliable information with respect to physicians, hospitals, and insurers is therefore essential.

- **Reduce regulatory burdens on doctors.** Doctors must be free to focus on treating patients first, not entering codes on computers, and should not be tempted to change their medical judgment based on arbitrary or illogical reimbursement incentives.

- **Ensure sustainability and value for beneficiaries and taxpayers.** Prices are best for patients when determined by economic value rather than political power and when they are known in advance of the receipt of services. Government's use of non-market-based methods to determine reimbursement leads to overspending on low-value services and products and underpayment for high-value services and products, stifles beneficial innovation, and because of Medicare's size distorts payments throughout the health care system. Intermediate entities that can manage financial risk and ensure quality of care are important in transitioning to value-based care within the Medicare program.

- **Reduce waste, fraud, and abuse,** including through the use of artificial intelligence for their detection.

Regulatory Reforms. Medicare regulations restrict choice of coverage and care. The next Administration should reintroduce and restore regulations and demonstrations from the Trump Administration that were withdrawn, weakened, or never finalized by the Biden Administration, including:

- The Medicare Coverage of Innovative Technologies (MCIT) rule;

- The Risk Adjustment Data Validation (RADV) rule;
- The Medicare Advantage Qualifying Payment Arrangement Incentive (MAQI) demonstration; and
- The Global and Professional Direct Contracting (GPDC, rebranded as the Accountable Care Organization Realizing Equity, Access, and Community Health or ACO REACH) model.

Additionally, regulations should advance site neutrality by eliminating the inpatient-only list and expanding the ambulatory surgical center covered procedures list. Medicare generally pays more for inpatient hospital procedures and less for the same procedures performed in an outpatient setting. Whether a medical service is delivered in a physician's office, a clinic, or a hospital setting, the Medicare payment for that service should be the same. CMS should expand the application of site-neutral payment options to more settings. Such a policy would level the playing field among providers and remove the financial disabilities for medical professionals who would compete with hospital systems.[23]

Finally, HHS needs to restore and enhance conscience protection regulations that allow medical practitioners to participate in federal health care programs without being compelled to provide sex changes or similar services.

LEGISLATIVE PROPOSALS

- **Remove restrictions on physician-owned hospitals.** The Affordable Care Act (ACA)[24] imposed restrictions prohibiting Medicare from reimbursing physician-owned and specialty hospitals. The current restrictions do little more than serve the special interests of large hospital systems and undercut consumer choice of high-quality, specialty care. These restrictions should be removed so that physician-owned hospitals can compete with other hospitals in serving Medicare patients.[25]

- **Encourage more direct competition between Medicare Advantage and private plans.** Medicare Advantage (MA), a system of competing private health plans, is the major alternative to traditional Medicare for America's large and growing cohort of seniors. The program provides beneficiaries with a wide range of competitive health plan choices—a richer set of benefits than traditional Medicare provides and at a reasonable cost. Equally as important, the MA program has been registering consistently high marks for superior performance in delivering high-quality care. Critical reforms are still needed to strengthen and improve the program for the future. Specifically:

1. Make Medicare Advantage the default enrollment option.

2. Give beneficiaries direct control of how they spend Medicare dollars.

3. Remove burdensome policies that micromanage MA plans.

4. Replace the complex formula-based payment model with a competitive bidding model.

5. Reconfigure the current risk adjustment model.

6. Remove restrictions on key benefits and services, including those related to prescription drugs, hospice care, and medical savings account plans.[26]

Legacy Medicare Reform. Legislation reforming legacy (non-MA) Medicare should:

- **Base payments on the health status of the patient or intensity of the service rather than where the patient happens to receive that service.**

- **Replace the bureaucrat-driven fee-for-service system with value-based payments to empower patients to find the care that best serves their needs.**

- **Codify price transparency regulations.**

- **Restructure 340B drug subsidies[27] toward beneficiaries rather than hospitals.**

- **Repeal harmful health policies enacted under the Obama and Biden Administrations such as the Medicare Shared Savings Program[28] and Inflation Reduction Act.[29]**

Medicare Part D Reform. The Inflation Reduction Act (IRA) created a drug price negotiation program in Medicare that replaced the existing private-sector negotiations in Part D with government price controls for prescription drugs. These government price controls will limit access to medications and reduce patient access to new medication.

This "negotiation" program should be repealed, and reforms in Part D that will have meaningful impact for seniors should be pursued. Other reforms should include eliminating the coverage gap in Part D, reducing the government share in

the catastrophic tier, and requiring manufacturers to bear a larger share. Until the IRA is repealed, an Administration that is required to implement it must do so in a way that is prudent with its authority, minimizing the harmful effects of the law's policies and avoiding even worse unintended consequences.[30]

Medicaid. Over the past 45 years, Medicaid and the health safety net have evolved into a cumbersome, complicated, and unaffordable burden on nearly every state. The program is failing some of the most vulnerable patients; is a prime target for waste, fraud, and abuse; and is consuming more of state and federal budgets. The dramatic increase in Medicaid expenditures is due in large part to the ACA (Obamacare), which mandates that states must expand their Medicaid eligibility standards to include all individuals at or below 138 percent of the federal poverty level (FPL), and the public health emergency, which has prohibited states from performing basic eligibility reviews.

The overlap of available benefits among the various health agencies has led to a complex, confusing system that is nearly impossible to navigate—even for recipients. Recipients are often faced with a "welfare cliff" of benefit losses as they earn above a certain amount, which is contrary to the fundamental purpose of empowering individuals to achieve economic independence. Benefits increasingly involve nonmedical services such as air conditioning and housing, many of which are already handled by departments other than HHS.

Improper payments within Medicaid are higher than those of any other federal program. These payments are evidence of the inappropriateness of Medicaid's expansion, which, stemming largely from public health emergency maintenance of effort (MOE) requirements and the Affordable Care Act, has crowded out the primary targets of these programs: those who are most in need.

True health care reform cannot be accomplished in a bureaucratic silo or only through Medicaid and health safety net programs. Reform of the tax code is also essential to genuine, effective reform of our health care system. All components of the health care system should be part of the reform efforts, and it is imperative that the system be modified to assist states with their current programs. Therefore, the next Administration should:

- **Reform financing.** Allow states to have a more flexible, accountable, predictable, transparent, and efficient financing mechanism to deliver medical services. This system should include a more balanced or blended match rate, block grants, aggregate caps, or per capita caps. Any financial system should be designed to encourage and incentivize innovation and the efficient delivery of health care services. Federal and state financial participation in the Medicaid program should be rational, predictable, and reasonable. It should also incentivize states to save money and improve the quality of health care.

- **Direct dollars to beneficiaries more effectively and responsibly.** The current funding structure for the Medicaid program rewards expansions, lacks transparency, and promotes financing gimmicks. CMS should:

  1. End state financing loopholes.

  2. Reform payments to hospitals for uncompensated care.

  3. Replace the enhanced match rate with a fairer and more rational match rate.

  4. Restructure basic financing and put the program on a more fiscally predictable budget (which should include reform of Disproportionate Share Hospital payments to hospitals).[31]

- **Strengthen program integrity.** Make program integrity a top priority and the responsibility of the states. To protect the taxpayers' investment:

  1. **Incentivize states.** An enhanced contingency fee should be paid to states that successfully increase their efforts to decrease waste, fraud, and abuse. The current system's IT development 90/10 matching rate should be allowed for improvements in states' current fraud and abuse and eligibility systems. Innovative programs that show a positive return on investment for both the state and federal governments should be allowed without the onerous waiver process.

  2. **Improve Medicaid eligibility standards to protect those in need.** As Medicaid enrollment continues to climb, it is imperative that there are appropriate and accurate eligibility standards to ensure that the program remains focused on serving those who are in need. To this end, CMS should:

     a. Hold states accountable for improper eligibility determinations.
     b. Require more robust eligibility determinations.
     c. Strengthen asset test determinations within Medicaid.[32]

  3. **Conduct oversight and reform of managed care.**[33]

- **Incentivize personal responsibility.** CMS should allow states to ensure that Medicaid recipients have a stake in their personal health care and a say in decisions related to the Medicaid program. Personal responsibility

and consumer choice for Medicaid recipients must go together as standard components of the safety net, especially for able-bodied recipients. Medicaid recipients, like the rest of Americans, should be given both the freedom to choose their health plans and the responsibility to contribute to their health care costs at a level that is appropriate to protect the taxpayer.

- **Add work requirements and match Medicaid benefits to beneficiary needs.** Because Medicaid serves a broad and diverse group of individuals, it should be flexible enough to accommodate different designs for different groups. For example, CMS should launch a robust "personal option" to allow families to use Medicaid dollars to secure coverage outside of the Medicaid program. CMS should also:

    1. Clarify that states have the ability to adopt work incentives for able-bodied individuals (similar to what is required in other welfare programs) and the ability to broaden the application of targeted premiums and cost sharing to higher-income enrollees.

    2. Add targeted time limits or lifetime caps on benefits to disincentivize permanent dependence.[34]

- **Allow private health insurance.** Congress should allow states the option of contributing to a private insurance benefit for all members of the family in a flexible account that rewards healthy behaviors. This reform should also allow catastrophic coverage combined with an account similar to a health savings account (HSA) for the direct purchase of health care and payment of cost sharing for most of the population.

- **Increase flexible benefit redesign without waivers.** CMS should add flexibility to eliminate obsolete mandatory and optional benefit requirements and, for able-bodied recipients, eliminate benefit mandates that exceed those in the private market. This should include flexibility to redesign eligibility, financing, and service delivery of long-term care to serve the most vulnerable and truly needy and eliminate middle-income to upper-income Medicaid recipients.

- **Eliminate current waiver and state plan processes.** CMS should allow providers to make payment reforms without cumbersome waivers or state plan amendment processes where possible. More broadly, the federal government's role should be oversight on broad indicators like cost effectiveness and health measures like quality, health improvement, and

wellness and should give the balance of responsibility for Medicaid program management to states. This reform would include adding Section 1115[35] waiver requirements in some cases (such as imposing work requirements for able-bodied adults) while rescinding requirements in others (such as non–health care benefits and services related to climate change).

AFFORDABLE CARE ACT AND PRIVATE HEALTH INSURANCE

- **Remove barriers to direct primary care.** Direct primary care (DPC) is an innovative health care delivery model in which doctors contract directly with patients for their care on a subscription basis regardless of how or where the care is provided. The DPC model is improving patient access, driving higher quality and lower cost, and strengthening the doctor–patient relationship. DPC has faced many challenges from government policymakers, including overly exuberant attempts at regulation and misclassification. Changes should clarify that DPC's fixed fee for care does not constitute insurance in the context of health savings accounts.[36]

- **Revisit the No Surprises Act on surprise medical billing**. The No Surprises Act[37] protected consumers against balance bills, but it also established a deeply flawed system for resolving payment disputes between insurers and providers. This government-mandated dispute resolution process has sown confusion among arbiters and regulators as judges have sought to ascertain its meaning. The No Surprises Act should scrap the dispute resolution process in favor of a truth-in-advertising approach that will protect consumers and free doctors, insurers, and arbiters from confused and conflicting standards for resolving disputes that the disputing parties can best resolve themselves.[38]

- **Facilitate the development of shared savings and reference pricing plan options.** Under traditional insurance, patients who choose lower-cost care do not benefit financially from that choice. Barriers to rewarding patients for cost-saving decisions should be removed. CMS should ensure that shared savings and reference pricing models that reward consumers are permitted.

- **Separate the subsidized ACA exchange market from the non-subsidized insurance market.** The Affordable Care Act has made insurance more expensive and less competitive, and the ACA subsidy scheme simply masks these impacts. To make health insurance coverage more affordable for those who are without government subsidies, CMS should develop a plan to separate the non-subsidized insurance market

from the subsidized market, giving the non-subsidized market regulatory relief from the costly ACA regulatory mandates.[39]

- **Strengthen hospital price transparency.** In 2020, CMS completed its rule to require hospitals to post the prices of common hospital procedures.[40] Future updates of these rules should focus on including quality measures. Combined with the shared savings models and other consumer tools, these efforts could deliver considerable savings for consumers.[41]

Center for Consumer Information and Insurance Oversight (CCIIO). CMS also plays an outsized role in overseeing the Obamacare exchanges, including managing Healthcare.gov, through the Center for Consumer Information and Insurance Oversight (CCIIO). While Obamacare limits plan options, CCIIO has been overly prescriptive in dictating what benefits and types of health plans may participate in the exchanges, thereby actually stifling market innovation and driving up costs.

Congress should build on the Trump Administration's efforts to expand choices for small businesses and workers, both in and out of the exchanges, by codifying an expansion of association health plans, short-term health plans, and health reimbursement arrangements (including individual coverage HRAs). CCIIO should also work with the Treasury Department and the Office of Management and Budget (OMB) to give consumers more flexibility with their health care dollars through expanded access to health savings accounts.

EMERGENCY PREPAREDNESS

- **Expand the scope of practice of low-complexity and moderate-complexity clinical laboratories.** During the COVID-19 pandemic, allowing laboratories greater regulatory flexibility regarding CLIA requirements increased access to testing. However, the need for regulatory flexibility is not limited to emergency situations. Ongoing innovations in medical care will continue to drive demand for clinical testing and new tests. One way that increasing demand for other medical services has been accommodated is by revising restrictions on scope of practice to enable providers to practice at the so-called top of their license. CMS should similarly revise CLIA rules regarding scope of practice for clinical laboratories and testing personnel.[42]

- **Create CLIA-certification-equivalent pathways for non-clinical laboratories and researchers.** The COVID-19 pandemic revealed that the U.S. needs to leverage the expertise of non-clinical laboratories and researchers in order to bolster clinical testing capacity. To accomplish this,

CMS should create pathways for granting non-clinical laboratories and their testing personnel CLIA certification equivalency. Non-clinical researchers already demonstrate their technical expertise through online training and certification programs. CMS should build on that existing framework so that those laboratories and personnel can similarly demonstrate their clinical testing capabilities.[43]

LIFE, CONSCIENCE, AND BODILY INTEGRITY

- **Prohibit abortion travel funding.** Providing funding for abortions increases the number of abortions and violates the conscience and religious freedom rights of Americans who object to subsidizing the taking of life. The Hyde Amendment[44] has long prohibited the use of HHS funds for elective abortions, but an August 2022 Biden executive order[45] pressed the HHS Secretary to use his authority under Section 1115 demonstrations to waive certain provisions of the law in order to use taxpayer funds to achieve the Administration's goal of helping women to travel out of state to obtain abortions. Moreover, the Department of Justice Office of Legal Counsel (DOJ OLC) issued a politicized legal opinion declaring, for the first time in the history of Hyde, that this action did not violate the Hyde Amendment and that Hyde applies only to the performance of the abortion itself in violation of the plainly broad language that Congress used.

  Two of the first actions of a pro-life Administration should be for HHS to withdraw the Medicaid guidance (and any Section 1115 waivers issued thereunder) and for DOJ OLC to withdraw and disavow its interpretation of the Hyde Amendment.

- **Prohibit Planned Parenthood from receiving Medicaid funds.** During the 2020–2021 reporting period, Planned Parenthood performed more than 383,000 abortions.[46] The national organization reported more than $133 million in excess revenue[47] and more than $2.1 billion in net assets.[48] During this same year, Planned Parenthood reports that its affiliates received more than $633 million in government funding and more than $579 million in private contributions.[49] Planned Parenthood affiliates face accusations of waste, abuse and potential fraud with taxpayer dollars, failure to report the sexual abuse of minor girls, and allegations of profiting from the sale of organs from aborted babies.

  Policymakers should end taxpayer funding of Planned Parenthood and all other abortion providers and redirect funding to health centers that provide real health care for women. The bulk of federal funding for Planned

Parenthood comes through the Medicaid program. HHS should take two actions to limit this funding:

1. Issue guidance reemphasizing that states are free to defund Planned Parenthood in their state Medicaid plans.

2. Propose rulemaking to interpret the Medicaid statute to disqualify providers of elective abortion from the Medicaid program.

Congress should pass the Protecting Life and Taxpayers Act,[50] which would accomplish the goal of defunding abortion providers such as Planned Parenthood.

CMS should resolve pending Section 1115 waivers from Idaho, South Carolina, and Tennessee, which, like Texas in January 2022, are seeking both to prohibit abortion providers from participating in state-run Medicaid programs and to work with other states to do the same. Abortion is not health care, and states should be free to devise and implement programs that prioritize qualified providers that are not entangled with the abortion industry.

- **Withdraw Medicaid funds for states that require abortion insurance or that discriminate in violation of the Weldon Amendment.** The Weldon Amendment[51] declares that no HHS funding may go to a state or local government that discriminates against pro-life health entities or insurers. In blatant violation of this law, seven states require abortion coverage in private health insurance plans, and HHS continues to fund those states. HHS under President Trump disallowed $200 million in Medicaid funding from California because of the state's flouting of the law, but the Biden Administration restored it.

HHS/CMS should withdraw appropriated funding, up to and including 10 percent of Medicaid funds, from states that require abortion insurance coverage. DOJ should commit to litigating the defense of those funding decisions promptly to the Supreme Court in order to maximize HHS's ability to withdraw funds from entities that violate the Weldon Amendment.

Additionally, California has announced that it will discriminate against pharmacies that do not carry chemical abortion drugs *outside* of California. California's discrimination takes the form of cutting state contracts with such pharmacies and clearly violates the Weldon Amendment. The violation should likewise face the penalties discussed above.

- **Rewrite the ACA abortion separate payment regulation.** Section 1303 of Obamacare requires that insurers collect a separate payment for certain abortion coverage in qualified health plans that are approved to be sold on exchanges and that they keep those separate payments in separate accounts that are used only to pay for elective abortion services. Neither the letter nor the spirit of the law was enforced under President Obama, and a Trump-era regulation sought to correct this problem. The Biden HHS rescinded this regulation to allow insurance companies once again—contrary to the law—to collect combined payments for what are clearly required to be separate payments for elective abortion coverage. "Separate" does not mean "together."

  HHS should reinstate a Trump Administration regulation and enforce what the plain text of Section 1303 requires. That regulation should be further improved by requiring CMS to ensure that consumers pay truly separate charges for abortion coverage.

- **Audit Hyde Amendment compliance.** HHS should undertake a full audit to determine compliance or noncompliance with the Hyde amendment and similar funding restrictions in HHS programs. This audit should include a full review of the Biden Administration's post-*Dobbs* executive actions to promote abortion. It should also encompass a review of Medicaid managed care plans in pro-abortion states.

- **Reverse distorted pro-abortion "interpretations" added to the Emergency Medical Treatment and Active Labor Act.** The Emergency Medical Treatment and Active Labor Act (EMTALA)[52] prohibits hospitals that receive Medicare funds from "dumping" emergency patients who cannot pay by sending them to other hospitals. It also mandates that hospitals stabilize pregnant women and explicitly protects unborn children. Hospitals or physicians found to be in violation of the statute could lose all of their federal health funding—Medicare, Medicaid, CHIP, and other funds—and face civil penalties of up to nearly $120,000.

  In July 2022, HHS/CMS released guidance mandating that EMTALA-covered hospitals and the physicians who work there must perform abortions, to include completing chemical abortions even when the child might still be alive. The guidance also declared that EMTALA would protect physicians and hospitals that perform abortions in violation of state law if they deem those abortions necessary to stabilize the women's health. This novel interpretation of EMTALA is baseless. EMTALA requires

no abortions, preempts no pro-life state laws, and explicitly requires stabilization of the unborn child.

HHS should rescind the guidance and end CMS and state agency investigations into cases of alleged refusals to perform abortions. DOJ should agree to eliminate existing injunctions against pro-life states, withdraw its enforcement lawsuits, and in lawsuits against CMS on the guidance agree to injunctions against CMS and withdraw appeals of injunctions.

- **Reissue a stronger transgender national coverage determination.** CMS should repromulgate its 2016 decision that CMS could not issue a National Coverage Determination (NCD) regarding "gender reassignment surgery" for Medicare beneficiaries. In doing so, CMS should acknowledge the growing body of evidence that such interventions are dangerous and acknowledge that there is insufficient scientific evidence to support such coverage in state plans.

- **Enforce EMTALA.** The undeniable reality of abortion is that it does do not always result in a dead baby, and these born-alive babies are left to die. HHS should use EMTALA and Section 504 of the Rehabilitation Act,[53] which prohibits disability discrimination, to investigate instances of infants born alive and left untreated in covered hospitals. CMS, OCR, and OIG should be required to follow through on these investigations with specific enforcement actions.

  HHS should revive a Trump Administration proposed regulation, "Special Responsibilities of Medicare Hospitals in Emergency Cases and Discrimination on the Basis of Disability in Critical Health and Human Service Programs or Activities,"[54] to achieve this end. In addition, Congress should pass the Born-Alive Abortion Survivors Protection Act[55] to require that proper medical care be given to infants who survive an abortion and to establish criminal consequences for practitioners who fail to provide such care.

- **Permanently codify both the Hyde family of amendments and the protections provided by the Weldon Amendment.** Congress can accomplish this through legislation such as the No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act[56] (Hyde) and the Conscience Protection Act[57] (Weldon).

Radical Redefinition of Sex. On August 4, 2022, HHS published a proposed rule entitled "Nondiscrimination in Health Programs and Activities."[58] This rule addresses nondiscrimination provisions of the Affordable Care Act, known as Section 1557, which is enforced by the Office for Civil Rights and the Centers for Medicare and Medicaid Services. Section 1557 prohibits discrimination on the basis of race, color, national origin, age, disability, and sex in covered health programs or activities.

Under the proposed rule, sex is redefined: "Discrimination on the basis of sex includes, but is not limited to, discrimination on the basis of sex stereotypes; sex characteristics, including intersex traits; pregnancy or related conditions; sexual orientation; and gender identity."[59] In other words, the department proposes to interpret Section 1557 as if it created special privileges for new classes of people, defined in ways that are highly ideological and unscientific.

The redefinition of sex to cover gender identity and sexual orientation and pregnancy to cover abortion should be reversed in all HHS and CMS programs as was done under the Trump Administration. This includes the Children's Health Insurance Program (CHIP). Low-income families who rely on CHIP should not be coerced, pressured, or otherwise encouraged to embrace this ideologically motivated sexualization of their children.

However, while the Biden Administration's Section 1557 regulation should be altered and corrected, the lactation room requirements added in the regulation should either be consistently included in any upcoming Section 1557 rulemaking or be proposed in a new individual rule.

COVID-19 Vaccination and Mask Requirements. Health care workers were praised for their self-sacrifice in caring for sick patients at the beginning of the COVID-19 pandemic, but then they were fired if they objected to receiving COVID-19 vaccines with or without complying with onerous masking requirements and regardless of whether they already had the virus and had gained natural immunity. With the disease being endemic and constantly mutating, vaccines and universal masking in health care facilities do not have appreciable benefits in reducing COVID-19 transmission throughout the community. Moreover, more recent COVID strains pose fewer health risks than the earlier strains, and the pandemic has been declared to be at an end. CMS should:

- Announce nonenforcement of the Biden Administration's COVID-19 vaccination mandate on Medicaid and Medicare hospitals.
- Revoke corresponding guidance and regulations.
- Refrain from imposing general COVID-19 mask mandates on health care facilities or personnel.

- Pay damages to all medical professionals who were dismissed directly because of the CMS vaccine mandate.

ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF)

TANF. The Temporary Assistance for Needy Families (TANF) program is a federal block grant that gives states significant flexibility to fund a broad array of programs aimed at helping low-income families break the cycle of poverty and achieve economic self-sufficiency. States use TANF to fund monthly cash assistance payments to low-income families with children as well as a wide range of services that include work activities, work supports and supportive services, child-care, administration and systems, tax credits, pre-K/Head Start, child welfare, and other services.

The TANF program serves 1.8 million individuals. Since 1996, when the program was reformed, federal TANF outlays have been $16.5 billion. The state match is $14.9 billion, bringing the total state and federal TANF investment to $31.4 billion.

The TANF statute requires that states engage 50 percent of single-parent families in work for at least 30 hours a week (20 hours a week for single parents with children under age six, though states have the option to waive the requirement for families with children under the age of six, and most do). States also have 90 percent work requirements for two-parent families to engage in work for 35 hours per week. Because of the "Caseload Reduction Credit," states' work engagement targets are reduced if their assistance caseloads have fallen since 2005. As a result, 21 states had a work engagement target of zero percent in 2017.

Generally, states apply their work requirement only to beneficiaries receiving basic assistance, who account for 22.3 percent of TANF outlays. The Trump Administration proposed a Supplemental Nutrition Assistance Program (SNAP) rule to "increase program integrity and reduce fraud, waste, and abuse" that would have prevented an individual from qualifying for SNAP simply because he or she received a pamphlet from the TANF program.[60] This rule defined non-cash benefits as those that are worth at least $50 a month and received for at least six months. The tenets of this rule should be applied to the TANF program as well. This definitional change would apply the TANF work requirements to any noncash benefit worth $50 a month and received for six consecutive months.

To increase transparency, HHS should clarify how states, in their quarterly and annual reports, ought to track and audit the outcomes from how they spend TANF funds to meet the TANF program's four statutory purposes.

Additionally, TANF priorities are not implemented in an equally weighted way. Marriage, healthy family formation, and delaying sex to prevent pregnancy are virtually ignored in terms of priorities, yet these goals can reverse the cycle of poverty in meaningful ways. CMS should require explicit measurement of these goals.

Teen Pregnancy Prevention (TPP) and Personal Responsibility Education Program (PREP). TPP is operated by the Office of Population Affairs in the Office of the Assistant Secretary for Health; PREP is operated by the ACF Office of Planning, Research, and Evaluation. Both programs should ensure that there is better reporting of subgrantees and referral lists so that they do not promote abortion or high-risk sexual behavior among adolescents. CMS should ensure that Sexual Risk Avoidance (SRA) proponents receive these grants and are given every opportunity to prove their effectiveness. SRA programs, both at ACF and at OASH and both discretionary and mandatory, should be equal in funding and emphasis. Qualitative research should be conducted on both types of programs to ensure continuous improvement.

In addition, certain provisions should be employed so that these programs do not serve as advocacy tools to promote sex, promote prostitution, or provide a funnel effect for abortion facilities and school field trips to clinics, or for similar purposes. Parent involvement and parent–child communication should be encouraged and be a part of any funded project. Risk avoidance should be prioritized, and any program that submits a proposal that promotes risk rather than health should not be eligible for funding.

Site visits should be revamped to ensure adherence to these optimal health metrics, and a cost analysis of programming as compared to students served should be a metric in funding (taking into account that in certain cases, intensive programs will serve fewer students and can have more positive results). These same parameters should apply to sex education programs at ACF. Any lists with "approved curriculum" or so-called evidence-based lists should be abolished; HHS should not create a monopoly of curriculum, adding to the profit of certain publishers. Furthermore, lists created in the past have given priority to sex-promotion textbooks. HHS should create a list of criteria for evaluating the sort of curriculum that should be selected for any sex education grant programs, both at OASH and at ACF, with the aim of promoting optimal health and adhering to the legislative language of each program.

Adoption Reform. There are roughly 400,000 children across the nation on the waiting list for foster care and 100,000 awaiting adoptive families, and the opioid/fentanyl crisis is putting more at risk every day. Unfortunately, many of the faith-based adoption agencies that serve these children are under threat from lawsuits, or else their licenses and contracts have been halted because they cannot in good conscience place children in every household due to their religious belief that a child should have a married mother and father.

HHS, through ACF and the Assistant Secretary for Financial Resources (ASFR), should repeal the unnecessary 2016 regulation[61] that imposes nonstatutory sexual orientation and gender identity nondiscrimination conditions on agency grants and return to the policy of maximizing the options for placing vulnerable children

in their forever homes. ACF and OCR should also survey their programs to consider whether additional waivers of HHS grant conditions—waivers the Biden Administration revoked in 2021—are needed for faith-based agencies.

Additionally, Congress should pass the Child Welfare Provider Inclusion Act[62] to ensure that providers and organizations cannot be subjected to discrimination for providing adoption and foster care services based on their beliefs about marriage.

Office of Refugee Resettlement (ORR). The Office of Refugee Resettlement should be moved to the Department of Homeland Security. Having health and welfare functions managed by HHS and border security functions managed by DHS has created intolerable failures in both. HHS and ORR have forgotten their original refugee-resettlement mission and instead have provided a panoply of free programs that incentivize people to come to the U.S. illegally. Even more troubling, ORR has too often placed children into dangerous situations when releasing them into the country.

Nearly all of HHS's care, custody, and placement of children is done through cooperative agreements with private agencies, many of which may have broken federal law by inducing or being accomplices in illegal immigration. Those arrangements could be handled far more effectively by DHS. Congress should reform the Trafficking Victims Protection Reauthorization Act[63] to transfer all ORR duties for unaccompanied alien children to DHS and eliminate the *Flores* settlement agreement.[64]

Regardless of where ORR's functions reside, ORR staff and care providers should never be allowed to facilitate abortions for unaccompanied children in its custody, including by transporting minors across state lines from pro-life states to abortion-friendly states. Pregnant, unaccompanied girls in ORR custody should be treated with dignity, not trafficked across state lines to be victimized by the abortion industry. ORR should withdraw its policy of allowing elective abortions for children in ORR care and issue a new policy of instructing care providers not to allow girls to be transported for elective abortions. HHS OGC and the White House should insist that DOJ fight to defend that policy up to the U.S. Supreme Court in light of *Dobbs*.

Office of Child Support Enforcement (OCSE) Congress established Aid to Families with Dependent Children in 1935 to assist single-parent families who were suffering financially from the loss of a bread-winning husband and father. Within two decades, however, the majority of families receiving aid were dependent because of paternal abandonment rather than death. Today, nearly a third of America's children live without a father present in the home, and a fourth of them are enrolled to receive child support.

The glaring issue in child support enforcement today is a non-resident father's ability to provide full or consistent child support payments. The literature reflects this divide as fathers have been categorized as "deadbeat" dads, then as "deadbroke"

dads, and now as "disconnected" dads who do not commit to the mother and child. Child support in the United States should strengthen marriage as the norm, restore broken homes, and encourage unmarried couples to commit to marriage.

Child Support Tax Credit. National or state guidelines and tax law should be updated to ensure that nonresident parents with child support orders can receive a nondependent, child support tax credit. Single filers of up to $41,756 and married or joint filers of up to $47,646 would be eligible for a child support tax credit similar to the current earned income tax credit. Filers could receive a maximum of $538 in annual returns for one child and a maximum of $3,584 in annual returns for two or more children (based on a credit rate of 34 percent). A child support tax credit would use the low-income, nonresident parents' own earned income and history of employment to assist them further in the task of caring for their children.

The key to this policy is that it empowers fathers with their own resources and money rather than creating another government assistance program (or a fully refundable credit) devoid of the father's own monetary efforts. This way, the nonresident father's role as financial provider and relational figure is affirmed, and much-needed financial resources are given to the children.

Visitation. Visitation is key to revitalizing child support and increasing payment frequency. The most effective way to lower a nonresident parent's monthly child support order is to spend more court-accounted-for time with the child. For example, Texas combined its child support court with its visitation court to ensure that resident and nonresident parents received state-mandated financial support orders and enforceable visitation orders.

Child Support Payment and Interactive Smartphone Application. Each state should be induced to implement a high-tech, easy-to-use application to centralize child support payments. As with Venmo or Cash App, nonresident parents would link their bank accounts and provide one-click monthly payments (or contribute incrementally throughout the month while tracking how much is due). Additionally, the nonresident parents could track "informal" gifts from money, groceries, clothes, sports gear, and more through the app.

This would address one of the main issues within current child support payment systems: nonresident parents claim that they are spending much of their own money to provide for children outside of their monthly payments and resident parents' claim that they spend little and neglect their official child support orders. Currently, only the latter claim can be tracked reliably. This process would enable nonresident parents to track the amount of informal support they provide and the reason for it while ensuring that the resident parent acknowledges and accepts the contribution.

Healthy Marriage and Relationship Education (HMRE) Program. The HMRE program is part of the ACF Office of Family Assistance. The following policies should be implemented.

- **Utilize HMRE funding or grants to provide state-level high school education resources and curriculum on healthy marriages, sexual risk avoidance, and healthy relationships.** Early interventions and prevention are much more cost-effective than are efforts to reach people already in broken relationships.

- **Allow child welfare funding to be used for marriage and relationship education.** Congress should adopt the following recommendation from a report issued by members of Congress's Joint Economic Committee:

  > Children are far more likely to experience abuse when they are raised outside of their married-parent family. Title II of the Child Abuse Prevention and Treatment Act provides grants to communities for the purpose of preventing child abuse and neglect, and one of the stated purposes for which the grants can be used is for efforts to increase family stability. However, Congress could change the law to make it clear that Title II funding can be used for healthy marriage and relationship education.
  >
  > Funding provided under Title IV-B of the Social Security Act—which provides grants to states for foster care and adoption services—can also be used for promoting healthy marriage. States should consider using some of their Title IV-B funding for providing healthy marriage and relationship education for families at risk of having their children placed in foster care.[65]

- **Provide educational information on healthy marriage and relationships at Title X family planning clinics.** HHS should require clinics it funds under Title X (family planning) to provide information to customers about the importance of marriage to family and personal well-being and refer them to available federal, state, and nonprofit marriage resources.

- **Ensure proper assessments with enough time to assess HMRE programs.** Although some widely available assessments of HMRE programs report poor outcomes, many of these assessments either utilized a poor methodology or tried to measure program success prematurely. Recent assessments have shown increasing effectiveness and positive community-level marital outcomes.[66]

  The HMRE program should receive a fair and realistic assessment. Additionally, the positive role of faith-based programs should be protected

and prioritized so that these programs do not receive undue scrutiny or pressure to conform to nonreligious definitions of marriage and family as put forward by the recently enacted Respect for Marriage Act.[67]

- **Protect faith-based grant recipients from religious liberty violations that maintain a biblically based, social science–reinforced definition of marriage and family.** Social science reports that assess the objective outcomes for children raised in homes aside from a heterosexual, intact marriage are clear: All other family forms involve higher levels of instability (the average length of same-sex marriages is half that of heterosexual marriages); financial stress or poverty; or poorer behavioral, psychological, or educational outcomes.

  For the sake of child well-being, programs should affirm that children require and deserve both the love and nurturing of a mother and the play and protection of a father. Despite recent congressional bills like the Respect for Marriage Act that redefine marriage to be the union between any two individuals, HMRE program grants should be available to faith-based recipients who affirm that marriage is between not just any two adults, but one man and one unrelated woman.

Healthy Marriage and Responsible Fatherhood (HMRF) Program. This program is located within the ACF Office of Family Assistance. Its goal, like that of the HMRE program, is to provide marriage and parenting guidance for low-income fathers. This includes fatherhood and marriage training, curriculum, and subsequent research.

- **Implement a pro-fatherhood messaging campaign.** With nearly 41 percent of children born without a married father in the home (and nearly 69 percent among black Americans), the fatherhood problem is clear. Similar to Florida Governor Ron DeSantis's 2022 fatherhood bill, HMRF funds should be used to support national messaging campaigns that affirm the role fathers play in the lives of their children, that recognize the financial hardships the fathers themselves face, and that seek to provide relationship education to fathers who were raised without a father in the home.

- **Fund effective HMRF state programs.** Grant allocations should protect and prioritize faith-based programs that incorporate local churches and mentorship programs or increase social capital through multilayered community support (including, for example, job training and social events). Programs should affirm and teach fathers based on a biological and

sociological understanding of what it means to be a father—not a gender-neutral parent—from social science, psychology, personal testimonies, etc.

ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES (ACYF)

- **Allocate funding to strategy programs promoting father involvement or terminate parental rights quickly.** ACYF is currently considering different programs to encourage parents, especially fathers, to engage with their children in foster care. While these program ideas and initiatives are still in the early planning stages, promoting responsible parenthood to reintegrate children or at least keep a consistent male figure in the minor's life is crucial. At the same time, in cases where the father or mother does not make a sincere or serious effort to be involved in the child's upbringing, termination of parental rights for children in foster care should be swift.

OFFICE OF HEAD START (OHS)

- **Eliminate the Head Start program.** Head Start, originally established and funded to support low-income families, is fraught with scandal and abuse. With a budget of more than $11 billion, the program should function to protect and educate minors. Sadly, it has done exactly the opposite. In fact, "approximately 1 in 4 grant recipients had incidents in which children were abused, left unsupervised, or released to an unauthorized person between October 2015 and May 2020."[68] Research has demonstrated that federal Head Start centers, which provide preschool care to children from low-income families, have little or no long-term academic value for children. Given its unaddressed crisis of rampant abuse and lack of positive outcomes, this program should be eliminated along with the entire OHS. At the very least, the program's COVID-19 vaccine and mask requirements should be rescinded.

ADMINISTRATION FOR COMMUNITY LIVING (ACL)

- **Support palliative care.** Physician-assisted suicide (PAS) is legal in 10 states and the District of Columbia. Legalizing PAS is a grave mistake that endangers the weak and vulnerable, corrupts the practice of medicine and the doctor–patient relationship, compromises the family and intergenerational commitments, and betrays human dignity and equality before the law. Instead of embracing PAS, policymakers should focus on the benefits of palliative care, which works to improve a patient's quality of life by alleviating pain and other distressing symptoms of a serious illness. HHS ACL should survey their programs to ensure that they are supporting vulnerable persons of age or disability and are not facilitating or encouraging participation in PAS.

- **Readdress the National Strategy to Support Family Caregivers.** While in theory the strategy aims to support family members with duties to care for older family members, the plan is overly focused on racial and "LGBTQ+ equity." The strategy should be examined to establish an efficient plan to support caregivers and their families. There should also be a review of its COVID-19 policies.

HEALTH RESOURCES AND SERVICES ADMINISTRATION (HRSA)

- **Congress should allow CMS to use the 340B data that HRSA collects rather than having CMS conduct its own survey**, especially in view of the U.S. Supreme Court's *American Hospital Association v. Becerra* decision.[69] The legislation should also create penalties for those who do not respond to HRSA's data collection.

- **Legally define the locus of service as where the provider is located during the telehealth visit rather than where the patient is.** With such a definition, states could continue to reserve their powers to establish the standards for licensure and scope of practice. The providers could ensure continuity and consistency of care no matter where their patients might move while maintaining the licenses that make the most sense for them.

  Americans are far more mobile and technologically advanced today than they were when most health care laws were written. Telehealth has become increasingly important, particularly during the height of the COVID-19 pandemic. It also has great potential in rural and other areas where there are shortages of health care providers. HRSA's Office for the Advancement of Telehealth includes a program known as the Licensure Portability Grant Program, which bolsters state efforts to reform licensing laws to maximize telehealth flexibility. HRSA does not have the authority through this office to dictate licensure laws; that power has typically been reserved to the states. However, telehealth across state lines, when permitted, is interstate commerce, which can be regulated by the federal government according to the Constitution.

- **Restore Trump religious and moral exemptions to the contraceptive mandate (also a CMS rule).** HHS should rescind, if finalized, the regulation titled "Coverage of Certain Preventive Services Under the Affordable Care Act," proposed jointly by HHS, Treasury, and Labor.[70] This rule proposes to amend Trump-era final rules regarding religious and moral exemptions and accommodations for coverage of certain preventive services under the ACA. Preventive services include contraception, and

it appears the proposed rule would change the existing regulations for religious and moral exemptions to the ACA's contraception mandate. There is no need for further rulemaking that curtails existing exemptions and accommodations.

- **Require HRSA to use rulemaking to update the women's preventive services mandate.** The contraceptive mandate issued under Obamacare has been the source of years of egregious attacks on many Americans' religious and moral beliefs. The mandate was issued as part of the women's preventive services guidelines, which were issued without any rulemaking that involved public notice and an opportunity to comment. Instead, HRSA issued and changed the mandate by simply posting changes to its website. HRSA also started off not requiring coverage of fertility awareness–based methods of family planning, then requiring them, and then removing the requirement without notifying the public. A federal judge recently ruled that this failure to undergo notice and comment in issuing the mandate is unlawful. HRSA should be required to repromulgate any women's preventive services mandates through the notice and comment process that is compliant with the Administrative Procedures Act.

  Moreover, since the Obama Administration HRSA entered into long-term contracts with the pro-abortion American College of Obstetricians and Gynecologists (ACOG) and related entities to serve as an exclusive adviser with respect to the content of this mandate, HRSA has used this arrangement to ignore comments that members of the public were sometimes able to submit in the process, and ACOG has abused its position to attack HHS's allowance of religious and moral exemptions to the contraceptive mandate. HHS should rescind these contracts and establish an advisory committee that is compliant with the Federal Advisory Committee Act and has members that are committed to women's preventive services and are not pro-abortion ideologues.

- **Expand inclusion of fertility awareness–based methods and supplies to family planning in the women's preventive services mandate.** The ACA requires coverage of and prevents insurance plans from imposing any cost-sharing requirements on women who obtain preventive care and screenings as defined by HRSA. In 2016, HHS included "instruction in fertility awareness-based methods" as part of this requirement. However, in December 2021, HHS removed that language from its list without using the notice-and-comment process or giving any rationale, both of which are mandated by the Administrative Procedures Act. In August

2022, a federal court blocked this attempt to eliminate health insurance coverage for fertility awareness–based methods of family planning from requirements that cover at least 58 million women, and the judge made his ruling permanent in December 2022. HRSA should promulgate regulations consistent with this order.

HHS should more thoroughly ensure that fertility awareness–based methods of family planning are part of women's preventive services under the ACA. FABMs often involve costs for materials and supplies, and HHS should make clear that coverage of those items is also required. FABMs are highly effective and allow women to make family planning choices in a manner that meets their needs and reflects their values.

- **Eliminate men's preventive services from the women's preventive services mandate.** In December 2021, HRSA updated its women's preventive services guidelines to include male condoms after claiming for years that it had no authority to do so because Congress explicitly limited the mandate to "women's" preventive care and screenings. HRSA should not incorporate exclusively male contraceptive methods into guidelines that specify they encompass only women's services.

- **Eliminate the week-after-pill from the contraceptive mandate as a potential abortifacient.** One of the emergency contraceptives covered under the HRSA preventive services guidelines is Ella (ulipristal acetate). Like its close cousin, the abortion pill mifepristone, Ella is a progesterone blocker and can prevent a recently fertilized embryo from implanting in a woman's uterus. HRSA should eliminate this potential abortifacient from the contraceptive mandate.

- **Withdraw Ryan White guidance allowing funds to pay for cross-sex transition support.** HRSA should withdraw all guidance encouraging Ryan White HIV/AIDS Program service providers to provide controversial "gender transition" procedures or "gender-affirming care," which cause irreversible physical and mental harm to those who receive them.

- **Ensure that training for medical professionals (doctors, nurses, etc.) and doulas is not being used for abortion training.** HHS should ensure that training programs for medical professionals—including doctors, nurses, and doulas—are in full compliance with restrictions on abortion funding and conscience-protection laws. In addition, HHS should:

1. Investigate state medical school compliance with the Coats–Snowe Amendment,[71] which prohibits discrimination against health care entities that do not provide or undergo training for abortion.

2. Ensure that the Accreditation Council for Graduate Medical Education (ACGME) complies with all relevant conscience statutes and regulations and that states have taken the affirmative steps (for example, by issuing regulations) to assure compliance with Coats–Snowe.

3. Communicate to medical schools that any abortion-related training must be on an opt-in rather than opt-out basis.

4. Require states that receive HHS funds to issue regulations or enter into arrangements with accrediting bodies to comply with the Coats–Snowe Amendment's prohibition of mandatory abortion training by individuals or institutions. The Coats–Snowe Amendment specifically requires such state regulations or arrangements.

- **Prioritize funding for home-based childcare, not universal day care.** As HRSA's Early Childhood Health page outlines, "Currently, only about half of U.S. preschoolers are on-track with their development and ready for school. And more than one in four of children (28%) who experience abuse or neglect are under 3 years old."[72] Concurrently, children who spend significant time in day care experience higher rates of anxiety, depression, and neglect as well as poor educational and developmental outcomes. Instead of providing universal day care, funding should go to parents either to offset the cost of staying home with a child or to pay for familial, in-home childcare.

- **Provide education and resources on early childhood health.** By partnering with new organizations like the Center on Child and Family Poverty, HRSA should provide resources and information on the importance of the mother–child relationship in child well-being. This should include relationship education curricula that equip mothers and caregivers to connect with and improve their understanding of their infants, toddlers, and young children.

Maternal and Child Health. Currently, the HRSA Maternal and Child Health program is collecting data on the benefits of doulas in improving the health, safety, and emotional well-being of mothers at birth. Doulas provide a patient-focused, nonmedical support system for single or married mothers that "decreases the

overall cesarean rate by 50%, the length of labor by 25%, the use of oxytocin by 40%, and requests for an epidural by 60%. Doulas often use the power of touch and massage to reduce stress and anxiety during labor."[73]

Given concerns about maternal mortality or postpartum depression that is worsened by poor birth experiences, doulas should be an active option for all women whether they are giving birth in a traditional hospital, through midwifery, or at home. Additionally, since most Doulas' services are not covered by traditional insurance programs, the Maternal and Child Health program should work to provide funding for low-income mothers.

INDIAN HEALTH SERVICE (IHS)

The Indian Health Service serves our American Indian and Alaska Native populations. Reforms are needed to improve America's ability to deliver on its promises to these important populations and must take account of cultural preferences and lifestyles, limitations due to geography (such as challenging terrain), and limited Internet access. For example, contacting individuals within some of these communities and tribes during the COVID-19 pandemic proved to be difficult because many had transient addresses and unreliable cell service.

During the transition to the Biden Administration, IHS abandoned tribes as their sources of COVID-19 tests and vaccine supplies disappeared. It is important to guard against such situations in order to preserve these tribes' access to health resources during public health emergencies (PHEs). Even before the pandemic, services available to these populations through federal resources and personnel (such as vision care) were often scarce or nonexistent.

Patients in these populations should be empowered to rely on alternatives to IHS through better access to private health care providers. Exploring positive reforms contained in the VA MISSION Act[74] could reveal similar opportunities for increased options and access for American Indians and Alaska Natives.

RURAL HEALTH

A growing concern is the decreasing access to health care services for Americans living in rural, less populated areas. Many find themselves in regions that were not previously as rural as industries move away, taking with them economic prosperity and often medical providers. Others are in essential professions such as farming that by nature necessitate living in regions with fewer city accommodations and economic opportunities. Seeking space for one's family and cultivating the land are valued goals that are deeply rooted in America's fabric.

Both Congress and an Administration must continually keep in mind how health care policies uniquely affect these regions because their market trends and populations are different from those of more populous regions. Often, rural patients face an hour's drive to the nearest medical provider or facility or have

limited or no Internet access, which restricts their access to telehealth services (especially video visits).

To improve its health care policies that affect rural regions, HHS should:

- **Reduce the regulatory burden** and unleash private innovation that can discover solutions to unique, local needs.
- **Implement or encourage policies** that increase the supply of health care providers, such as increased telehealth access and interstate licensure (a historically state matter), including for volunteers wishing to provide temporary, charitable services across state lines.
- **Encourage flexibility** in modes of health care delivery, including less expensive alternatives to hospitals and telehealth independent of expensive air ambulances.

OFFICE OF THE SECRETARY

The Secretary of Health and Human Services and the Office of the Secretary necessarily set the tone for the entire department. The Secretary is the most accountable individual within HHS and, along with his or her immediate staff, should therefore be responsible for setting the policies that govern the department's operations instead of allowing the operational divisions to assume the leading role in policymaking, thereby diffusing responsibility.

Practical reforms to enhance the Secretary's accountability should include the following:

- **Restrict HHS's ability to declare indefinite public health emergencies (PHEs).** Currently, HHS is merely required to notify Congress of such a declaration within 48 hours. Congress should establish a set time frame for any PHE, placing on the Secretary the burden of proof as to why an extension of the PHE is necessary.
- **Reinstate the HHS SUNSET (Securing Updated and Necessary Statutory Evaluations Timely) rule.**[75] Congress should codify the now-reversed Trump Administration rule that required all HHS agencies to review regulations retrospectively and publish results; without such a review, regulations expire.
- **Investigate, expose, and remediate any instances in which HHS violated people's rights by:**

1. Colluding with Big Tech to censor dissenting opinions during COVID.

2. Colluding with abortion advocates and LGBT advocates to violate conscience-protection laws and the Hyde Amendment.

The Life Agenda. The Office of the Secretary should eliminate the HHS Reproductive Healthcare Access Task Force and install a pro-life task force to ensure that all of the department's divisions seek to use their authority to promote the life and health of women and their unborn children. Additionally, HHS should return to being known as the Department of Life by explicitly rejecting the notion that abortion is health care and by restoring its mission statement under the Strategic Plan and elsewhere to include furthering the health and well-being of all Americans "from conception to natural death."

The next Administration should create a dedicated Special Representative for Domestic Women's Health. In the Trump Administration, there was a Special Representative for Global Women's Health that focused on international issues, but this position lacked authority to be the lead on international policies because of overlapping issues with the U.S. Department of State and USAID (and at times a lack of clarity as to the lead point of contact and policy decisions at the White House). The new Special Representative would serve as the lead on all matters of federal domestic policy development related to life and family with support from the DPC for implementation and coordination among agencies. In the post-*Dobbs* era, advancing support for mothers will include coordination among agencies outside of HHS, and the Special Representative would provide a clear focal point for all issues related to protecting life and serving families.

The Family Agenda. The Secretary's antidiscrimination policy statements should never conflate sex with gender identity or sexual orientation. Rather, the Secretary should proudly state that men and women are biological realities that are crucial to the advancement of life sciences and medical care and that married men and women are the ideal, natural family structure because all children have a right to be raised by the men and women who conceived them.

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH (OASH) / OFFICE OF THE SURGEON GENERAL (OSG)

The Assistant Secretary for Health (ASH) is the four-star admiral for the United States Public Health Service Commissioned Corps (USPHS), and the Surgeon General (SG) is the three-star admiral.

The ASH is tasked with overseeing not only the USPHS, but also 10 regional health offices, multiple presidential and secretarial advisory committees, and other offices such as the Offices of Minority Health, Women's Health, and Population Affairs. The Secretary can further expand the ASH's responsibilities (for example, by

designating the ASH as liaison to the CDC). The SG officially oversees the daily operations of the USPHS, although those are actually under the control of the Director of the USPHS Commissioned Corps Headquarters. The SG also issues information to the public (Surgeon General's advisories, Calls to Action, and Reports), serving in effect as a key public health spokesperson for the federal government.

USPHS officers are assigned to various agencies such as the CDC, NIH, and Bureau of Prisons. Their organizational structure is similar in some respects to the National Guard's, and their salaries are paid primarily by the agencies to which they are assigned (which serves to limit USPHS appropriations). USPHS officers can be deployed on missions to respond to domestic or international crises (for example, a hurricane in Florida or an Ebola outbreak in Africa) at any time.

The USPHS should be restructured to make it more like its sister uniformed services with a more streamlined chain of command and corresponding appropriations to ensure efficiency and clarity of mission. Its core mission should be refocused to emphasize prompt, responsive deployments that meet specific criteria and are less dependent on the various agencies to which the officers are assigned. Fulfillment of specific tasks should not be duplicated by non-uniformed civil servants and USPHS officers, and any roles that can be filled by civilians should be filled by them.

The ASH and SG positions should be combined into one four-star position with the rank, responsibilities, and authority of the ASH retained but with the title of Surgeon General and some of the SG's communications responsibilities, which would include disseminating other HHS messages and sharing general medical advice without legal weight. The holder of this consolidated position, which should be filled by a health care provider, would be better positioned to ensure that the USPHS is properly focused and deployed.

With such reforms, the supporting office (previously the OASH and OSG) would be better equipped than other HHS offices or agencies to reduce silos and consolidate or eliminate duplicative functions. Congress should consider legislation that would require this office to take such actions or at least make such recommendations to the Secretary. Such legislation would require a thorough analysis of the various legal authorities impacting the department's current organizational structure.

The position previously known as the Principal Deputy Assistant Secretary for Health should be combined with and have the title of Deputy Surgeon General and become a three-star position with operational control including financial and deployment decisions. The Director of the Headquarters should be responsible for implementing the decisions of the Deputy Surgeon General.

Promoting Life and Family. In dealing with sexually transmitted diseases and unwanted pregnancies, the OASH should focus on root-cause analysis with a focus on strengthening marriage and sexual risk avoidance. Strong leadership is needed

in the Office of Science and Medicine to drive investigative review of literature for a variety of issues including the effect of abortion on prematurity and breast cancer; lack of evidence for so-called gender-affirming care; and physical and emotional damage following cross-sex treatments, especially on children. The OASH should withdraw all recommendations of and support for cross-sex medical interventions and "gender-affirming care."

Title X. The Title X family planning program should be reframed with a focus on better education around fertility awareness and holistic family planning and a Deputy Assistant Secretary for Population Affairs that understands the program and is able to work within its legislative framework (ideally, an MD). In addition, the Office of Population Affairs should eliminate religious discrimination in grant selections and guarantee the right of conscience and religious freedom of health care workers and participants in the Title X program.

In 2021, HHS reversed a Trump Administration regulation that required grantees to maintain strict physical and financial separation between Title X activity and abortion-related activity.[76] Under the Biden Administration's regulation,[77] Title X activity can be conducted alongside abortion activity without strict physical and financial separation. The regulation also requires grantees to refer for abortions despite sincere moral or religious objections. This effectively bans otherwise qualified pro-life grantees from participating in the program.

HHS should rescind the Biden Administration's regulation and reinstate the Trump Administration regulation for the program. It should also do this quickly (the Biden Administration completed its regulatory process and issued a final rule in less than nine months) and expand the potential grantee population beyond abortion providers like Planned Parenthood.

Congress should complement these efforts by passing legislation such as the Title X Abortion Provider Prohibition Act,[78] which would prohibit family planning grants from going to entities that perform abortions or provide funding to other entities that perform abortions. This would help to protect the integrity of the Title X program even under an abortion-friendly Administration.

ADMINISTRATION FOR STRATEGIC PREPAREDNESS AND RESPONSE (ASPR)

ASPR vs. FEMA. When the President declares a national emergency (per the Stafford Act) related to a public health emergency declared by the HHS Secretary, FEMA is activated and controls instead of HHS/ASPR. While this arrangement has some benefits because of FEMA's unique logistical capabilities, the arrangement should be reviewed—especially considering the COVID-19 pandemic—for improvements in efficiency according to expertise and available resources, reduced confusion for ASPR and among HHS agencies, and avoidance of duplicated efforts among agencies and personnel.

Strategic National Stockpile. The President should invoke the Defense Production Act,[79] which is a form of temporary takeover of private enterprises, only in the gravest circumstances. The Strategic National Stockpile (SNS) should be reformed to consider the potential supply chain disruptions of pandemics or global conflicts. Also, during the COVID pandemic, many states received ventilators from the SNS and hoarded them in places where a rush of COVID patients needing ventilators never materialized. The SNS should clarify its mission as supplier of last resort to the federal government, state governments, or first responders and key medical staff and should not portray itself as serving the public as a whole.

OFFICE OF GENERAL COUNSEL (OGC)

The Office of General Counsel is essential to ensuring that HHS is operating within the bounds of its numerous governing statutes. However, legal caution can outweigh practical necessity and often slows processes and decisions when time is of the essence. Such problems were evident both before and during the COVID-19 pandemic. Internal processes should be reformed to streamline necessary legal determinations during crises, and general processes should be reviewed for efficiency. OGC should also:

- **Rescind its PREP Act liability memo.** OGC issued a PREP Act liability memo that suspended application of civil rights and other laws in the context of the administration of covered countermeasures during the pandemic. It should be rescinded as contrary to law.

- **Rescind efforts to curtail OCR authority over conscience and religious freedom.** All OGC memos and *Federal Register* notices of organization or delegations of authority moving any OCR conscience and religious freedom enforcement to OGC, including RFRA, should be rescinded, and independent authority over these matters should be restored to OCR.

- **Encourage DOJ to repeal OLC memos allowing abortion funding despite Hyde and memos allowing federal enclave immunity to perform abortions despite the Assimilative Crimes Act.**[80]

- **Rescind legal analysis that authorized HHS to impose a moratorium on rental evictions during COVID.**

- **Rescind the OGC legal analysis saying that the injunction in *Bowen v. American Hospital Association*[81] prevents any proposed HHS regulations or enforcement actions concerning the denial of care**

to newborn infants with disabilities by covered health care entities without or against parental consent.

- **Rescind the legal analysis supporting the Biden Administration's decision to dismiss the University of Vermont Medical Center case dealing with the forced participation of a nurse in abortion in violation of law.**

- **Rescind the legal analysis restoring $200 million in Medicaid funds to California after having been found to be in violation of the Weldon Amendment by OCR.**

OFFICE OF GLOBAL AFFAIRS (OGA)

The Director of the Office of Global Affairs should have the title of Assistant Secretary so that he or she can adequately represent HHS and the Secretary and serve as the lead on global health diplomacy for the government. The designation "Director" is not understood to indicate the leadership role that this position holds in the international arena. In addition:

- **All divisions that work on international health efforts should be responsive to requests and direction from the Assistant Secretary with coordination for all health diplomacy emanating from OGA.**

- **OGA should have a clear and consistent voice for the Administration's pro-life and pro-family priorities in all international engagements.**

- **OGA should hold oversight authority for implementation of the Mexico City policy throughout all divisions.**

- **Every effort should be made to locate all OGA staff in the same building for better oversight and communication.**

- **Health attachés in various global locations should be trained in the Administration's policies with clear expectations communicated and with accountability, including replacement, when their conduct and advocacy are contrary to Administration policies and programmatic priorities.**

OFFICE FOR CIVIL RIGHTS (OCR)

Conscience Enforcement. Existing statutes that protect rights of conscience (such as the Church, Coats–Snowe, and Weldon amendments) do not explicitly

provide a private right of action that would allow victims to seek legal redress in court. At the same time, when it continues to fund governmental and private entities that violate these laws, HHS is spending taxpayer funds unlawfully. Under liberal Administrations, OCR has amassed a poor record of devoting resources to conscience and religious freedom enforcement and is often complicit in approving or looking the other way at the Administration's own attacks on religious liberty.

Congress should pass the Conscience Protection Act so that victims can pursue redress through courts without having to depend exclusively on OCR. In addition:

- **OCR should return to Trump Administration policies that initiated robust enforcement of these conscience laws.** It should restore and fully fund the Office of the Deputy Director for the Conscience and Religious Freedom Division (CRFD) and ensure that it has the necessary delegations from the Secretary to enforce these laws. The Secretary should give adequate delegations to OCR to pursue enforcement of conscience laws, including RFRA, and require all HHS components that provide funding or grants to cooperate with OCR CRFD investigations.

  The Secretary, the Deputy Secretary, and principals in other HHS divisions should endorse the remedial measures recommended by OCR CRFD and limit territorial objections and slow-down attempts by other divisional officials including OGC. HHS should withdraw funding from any violating entities that refuse to correct their behavior, and OCR CRFD should work with ASFR to ensure that all grant announcements and instruments inform grantees and applicants of their obligations to comply with federal health care conscience laws specifically as a condition of obtaining or maintaining their funding.

- **A draft OCR RFRA and religious freedom rule from the Trump Administration should be issued and finalized.** These regulations would provide a clear process for OCR's enforcement in coordination with other HHS divisions and existing HHS grants regulations.

- **HHS should reestablish waivers for state and child welfare agencies for religious exemptions, especially for faith-based adoption and foster care agencies.** It should also rescind subjective case-by-case evaluations for religious and faith-based organizations that request religious exemptions. These case-by-case determinations are currently coordinated with ACF and OCR. The recommended waivers should be granted to all states and agencies that request them, and OCR memos finding that RFRA would be violated if the waivers are not granted should be restored.

- **HHS should restore OCR authority to review requests for and render opinions on the application of RFRA to requests for religious accommodation of people, families, and doctors who cannot in good conscience take or administer vaccines, including those made or tested with aborted fetal cell lines.**

- **HHS should restore Section 1557, Section 504, and other OCR regulations and fix guidance documents.** In 2020, the Trump Administration's OCR published regulations under Section 1557 of the Affordable Care Act that restored the agency's enforcement of that law to the limits of its statutory text, deferred to the ACA's widespread use of a binary biological conception of sex discrimination, and specified that the regulation must comply with the religious exemption and abortion neutrality clauses in Title IX from which it is derived as well as the Religious Freedom Restoration Act and other laws. Courts blocked core provisions of that rule from going into effect.

  In 2022, the Biden Administration proposed to reinstate a rule contradicting the scope of the statute and imposing nondiscrimination on the basis of sexual orientation and gender identity. It is expected that this rule will be finalized in 2023 even though several courts have issued rulings against the interpretation on which it is based.

- **OCR should return its enforcement of sex discrimination to the statutory framework of Section 1557 and Title IX.** Specifically, it should:

  1. Remove all guidance issued under the Biden Administration concerning sexual orientation and gender identity under Section 1557, particularly the May 2021 announcement of enforcement[82] and March 2022 statement threatening states that protect minors from genital mutilation.[83]

  2. Issue a general statement of policy specifying that it will not enforce any prohibition on sexual orientation and gender identity discrimination in the Section 1557 regulation and that it will prioritize compliance with the First Amendment, RFRA, and federal conscience laws in any case implicating those claims. DOJ should commit to defending these actions aggressively against inevitable court challenges, including under cases such as *Heckler v. Chaney*.[84]

3. Issue a proposed rule to restore the Trump regulations under Section 1557, explicitly interpreting the law not to include sexual orientation and gender identity discrimination based on the textual approach to male and female biology taken by Congress in the ACA, the need to recognize biological distinctions as part of the sound practice of health care, and the need to ensure protections of medical judgment and conscience. DOJ should agree to defend this rule to the Supreme Court if necessary.

4. Issue a general statement of policy announcing that it plans to enforce Section 1557 discrimination bans by refocusing on serious cases of race, sex, and disability discrimination. In particular, OCR should highlight its 2019 investigation and voluntary resolution agreement with Michigan State University based on the sexual abuse of gymnasts by Larry Nassar. OCR should also coordinate with the Department of Education on a public education and civil rights enforcement campaign to ensure that female college athletes who become pregnant are no longer pressured to obtain abortions; pursue race discrimination claims against entities that adopt or impose racially discriminatory policies such as those based on critical race theory; and announce its intention to enforce disability rights laws to protect children born prematurely, children with disabilities, and children born alive after abortions.

5. Issue and finalize the Trump-era draft disability rights regulations concerning crisis standards of care and use of Quality of Life Adjusted Years (QALYs), and reissue and finalize a disability regulation (withdrawn by the Biden Administration) that prohibited discriminatory application of assisted suicide and denial of life-saving treatments for disabled newborns.

- **OCR should withdraw its pharmacy abortion mandate guidance.** OCR should withdraw its "Obligations Under Federal Civil Rights Laws to Ensure Access to Comprehensive Reproductive Health Care Services" guidance for retail pharmacies,[85] which purports to address nondiscrimination obligations of pharmacies under federal civil rights laws and in fact orders them to stock and dispense first-trimester abortion drugs. The guidance invents this so-called requirement and fails to acknowledge that pharmacies and pharmacists have the right not to participate in abortions, including pill-induced abortions, if doing so would violate their sincere moral or religious objections. Moreover, no federal civil rights laws preempt state pro-life statutes.

- **OCR should withdraw its Health Insurance Portability and Accountability Act (HIPAA)[86] guidance on abortion.** OCR should withdraw its June 2022 guidance[87] that purports to address patient privacy concerns following the *Dobbs* decision but is actually a politicized statement in favor of abortion and against *Dobbs*. HIPAA covers patients in the womb, but this guidance treats them as nonpersons contrary to law. The guidance is unnecessary and contributes to ideologically motivated fearmongering about abortion after *Dobbs*.

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of selfless individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume and include former officials in the U.S. Department of Health and Human Services and other agencies, as well as academics, attorneys, and experts in the health care and insurance fields.

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15

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Benjamin S. Carson, Sr., MD

The U.S. Department of Housing and Urban Development (HUD) administers a web of federal programs with mandates to support access to homeownership and affordable rental housing, relieve temporary housing instability for homeless persons, preserve a stable inventory of public housing units, and enforce mandates with powers to settle compliance matters ranging from housing quality standards to housing discrimination cases.

Politicians across party lines use HUD to promise ever-greater public benefits. In addition, HUD programs tend to perpetuate the notion of bureaucratically provided housing as a basic life need and, whether intentionally or not, fail to acknowledge that these public benefits too often have led to intergenerational poverty traps, have implicitly penalized family formation in traditional two-parent marriages, and have discouraged work and income growth, thereby limiting upward mobility. A new conservative Administration will therefore need to:

- **Reset HUD.** This effort should specifically include a broad reversal of the Biden Administration's persistent implementation of corrosive progressive ideologies across the department's programs.

- **Implement an action plan across both *process* and *people*.** This plan should include both the immediate redelegation of authority to a cadre of political appointees and the urgent implementation of administrative regulatory actions with respect to HUD policy and program eligibility.

- **Reverse HUD's mission creep over nearly a century of program implementation dating from the Department's New Deal forebears.** HUD's new political leadership team will need to reexamine the federal government's role in housing markets across the nation and consider whether it is time for a "reform, reinvention, and renewal"[1] that transfers Department functions to separate federal agencies, states, and localities.

OVERVIEW

HUD was created by the Housing and Urban Development Act of 1965[2] and since then has administered several programs that had been administered by the Housing and Home Finance Agency. With a proposed fiscal year (FY) budget authority totaling $71.9 billion and 8,326 full-time equivalent (FTE) employees,[3] it remains the largest government agency charged with implementing federal housing policy.

In addition to its headquarters in Washington, D.C., HUD has 10 regional offices as well as field offices and centers to implement specialized operational and enforcement responsibilities.[4] HUD program offices also interface with various networks of implementing organizations such as locally chartered public housing agencies (PHAs) and federal, state, and local government and judicial bodies as well as such private industry participants as mortgage lenders.

The Secretary of Housing and Urban Development can delegate authority to various entities across an array of HUD programs.[5] The Secretary also oversees the Office of the Deputy Secretary;[6] the Office of Hearings and Appeals (OHA);[7] the Office of Small and Disadvantaged Business Utilization (OSDBU);[8] and the Center for Faith-Based and Neighborhood Partnerships (CFBNP).[9] The Office of the Secretary also comprises a team of politically appointed positions and career support staff. Each of the following offices should be headed by political appointees except where otherwise noted.

- **Office of Administration**, headed by the Chief Administration Officer. The Office of Administration has responsibilities for the Office of the Chief Human Capital Officer (OCHO, headed by the Chief Human Capital Officer, currently a career position) and the Office of the Chief Procurement Officer (CPO, headed by the Chief Procurement Officer, currently a career position).

- **Office of the Chief Financial Officer**, headed by the Chief Financial Officer.

- **Office of the Chief Information Officer**, headed by the Chief Information Officer.

- **Office of Public Affairs**, headed by a Senate-confirmed Assistant Secretary (AS) or Principal Deputy Assistant Secretary (PDAS).

- **Office of Congressional and Intergovernmental Relations (CIR)**, headed by a Senate-confirmed AS or PDAS.

- **Office of Community Planning and Development (CPD)**, headed by a Senate-confirmed AS or Principal DAS. CPD administers various entitlement and non-entitlement programs across community development, disaster recovery, and housing for the homeless[10] and individuals with special needs, including Housing Opportunities for Persons with AIDS (HOPWA). The two largest CPD-administered programs are the Community Development Block Grant (CDBG) Program,[11] which includes disaster recovery funding, and the Home Investment Partnerships Program (HOME).[12] CPD's Relocation and Real Estate Division (RRED) has departmental delegated authority for the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.[13]

- **Office of Public and Indian Housing (PIH)**, headed by a Senate-confirmed AS or PDAS. PIH administers public housing and tenant-based rental assistance programs, as well as authorities for Native American and Native Hawaiian housing assistance and loan guarantee programs under the Native American Housing Assistance and Self-Determination Act (NAHSDA).[14] Tenant-Based Rental Assistance represents the major portion of HUD's nonemergency discretionary budget. HUD describes its Housing Choice Voucher Program as "an essential component of the Federal housing safety net for people in need."[15] PIH also implements funding for the Self-Sufficiency Coordinator Program; the Public Housing Fund (operating and capital funds for PHA administration of Section 9 public housing and Section 8 voucher programs); and Choice Neighborhoods (zeroed out during the Trump Administration budget request but included in HUD's FY 2023 budget, which requests $250 million for the program).[16]

- **Office of Housing and Federal Housing Administration (FHA)**, headed by a dual-hatted, Senate-confirmed AS and Federal Housing Commissioner or Acting Federal Housing Commissioner. The Office of Housing oversees implementation of the department's project-based rental assistance (PBRA) multifamily housing portfolio, Section 202 supportive housing for the elderly program, Section 811 program for disabled persons' housing, and Housing Counseling Assistance program. The Federal Housing Administration administers the Mutual Mortgage Insurance

Program (MMIF) and various other mortgage insurance, direct loan, and loan guarantee programs for single-family housing, multifamily housing, hospitals, and health care facilities that meet certain conditions.[17]

- **Government National Mortgage Association (GNMA)**, headed by a Senate-confirmed GNMA President or Executive Vice President. GNMA oversees more than $2 billion in federal guarantees to mortgage-backed securities structured from mortgages that are pooled from various federal programs, including mortgages backed by programs outside of HUD, principally the single-family mortgage guarantee programs administered by the Department of Veterans Affairs (VA) and the Rural Housing Service at the U.S. Department of Agriculture (USDA). FHA-insured single-family housing mortgages comprise the largest share of GNMA-guaranteed mortgage-backed securities.

- **Office of Departmental Equal Employment Opportunity**, headed by a Director.

- **Office of Fair Housing and Equal Opportunity (FHEO)**, headed by a Senate-confirmed AS or PDAS. The Assistant Secretary for FHEO is the designated HUD official responsible for enforcing Title VI of the Civil Rights Act of 1964,[18] Section 504 of the Rehabilitation Act of 1973,[19] and Section 109 of the Housing and Community Development Act of 1974. After informal efforts to resolve noncompliance, the AS for FHEO may make a formal finding of noncompliance and initiate enforcement action before an administrative tribunal or a referral to the Department of Justice.

- **Office of General Counsel (OGC)**, headed by the General Counsel or Principal Deputy General Counsel. OGC handles department-wide legal and compliance oversight advice with supervision responsibilities for the Deputy General Counsel for Housing Programs, Deputy General Counsel for Operations, and Deputy General Counsel for Enforcement and Fair Housing as well as the Departmental Enforcement Center.[20]

- **Office of Healthy Homes and Lead Hazard Control (OHHLHC)**, headed by a Director. OHHLHC was established in the early 1990s to eliminate lead-based paint hazards in America's privately owned and low-income housing, address healthy housing initiatives, and enforce lead-based paint regulations authorized under the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992).[21] These functions overlap with similar functions of the Environmental Protection Agency (also authorized to enforce lead-based

paint regulations under Title X) and the Centers for Disease Control and Prevention's Healthy Homes Initiative, Childhood Lead Poisoning Prevention Program, and National Asthma Control Program.

- **Office of Policy Development and Research (PDR)**, headed by a Senate-confirmed AS or PDAS. PDR was established in the early 1970s and today administers research activities, including external contract research grants, and provides analytical and policy advice to senior HUD staff. PDR also provides publicly available statistics through the American Housing Survey (AHS), which is sponsored by HUD and conducted by the Census Bureau; the State of the Cities Data Systems; data on the Low-Income Housing Tax Credit (LIHTC); and annual Fair Market Rents and Income Limits data, among other statistical publications and datasets on the characteristics of families assisted under HUD programs.

- **Office of Inspector General (OIG), headed by an Inspector General.** The OIG is independent of HUD and one of 12 Inspectors General across the federal government authorized under the Inspector General Act of 1978.[22] Operating under its own budget authority and strategic plan, the HUD OIG conducts internal and external audits and investigations of HUD programs and operations. While independent of HUD and holding no enforcement powers over HUD programs, HUD OIG works closely with the Office of General Counsel, the Departmental Enforcement Center, and HUD program offices. The Inspector General serves as an adviser to and non-voting member of the FHA Mortgagee Review Board.

- **Office of Field Policy and Management (FPM)**, headed by an Assistant Deputy Secretary for FPM. FPM supports the Secretary through regional and field office communication and external engagement with various community stakeholders to ensure the successful implementation of Secretarial initiatives and special projects.

HUD REFORM PILLARS

Ideally, Congress would redelegate authorities that have been diverted to HUD's administrative bureaucracy and safeguard taxpayers against the mission creep that inevitably occurs when Congress delegates power to an empowered and unelected bureaucracy that is insulated by civil service protections. If implemented, the reforms proposed in this chapter can help a new conservative Administration to use its Article II powers to rectify bureaucratic overreach, reverse the expansion of programs beyond their statutory authority, and end progressive policies that have been put in place at the department.

It is hoped that a future Congress under conservative leadership will enact legislative reforms of HUD programs. With or without congressional action, however, it is vital that a conservative Administration immediately institute guardrails across HUD programs to remove the administrative state's bureaucratic overreach of Article I authorities, thereby ensuring formal execution of Article II process and personnel reforms of the sort outlined below.

FIRST-DAY AND FIRST-YEAR ADMINISTRATIVE REFORMS[23]

A new conservative Administration can and should implement the following reforms that focus on both people[24] and process.[25] Implementation of these reforms simply requires courageous political leadership across all of HUD's key appointed positions.

- HUD political leadership should immediately assign all delegated powers to politically appointed PDAS, DAS, and other office leadership positions; change any current career leadership positions into political and non-career appointment positions; and use Senior Executive Service (SES) transfers to install motivated and aligned leadership.

- The President should issue an executive order making the HUD Secretary a member of the Committee on Foreign Investment in the U.S., which will gain broader oversight authorities to address foreign threats, particularly from China with oversight of foreign ownership of real estate in both rental and ownership markets of single-family and multifamily housing,[26] with trillions worth of real estate secured across HUD's portfolio.

- The Secretary should initiate a HUD task force consisting of politically appointed personnel to identify and reverse all actions taken by the Biden Administration to advance progressive ideology.[27]

- The Office of the Secretary or the leadership in the Office of General Counsel should conduct a thorough review of all subregulatory guidance that has been instituted outside of the Administrative Procedure Act (APA). Additionally, departmental leadership should:

    1. Immediately end the Biden Administration's Property Appraisal and Valuation Equity (PAVE) policies and reverse any Biden Administration actions that threaten to undermine the integrity of real estate appraisals.[28]

    2. Repeal climate change initiatives and spending in the department's budget request.[29]

3. Repeal the Affirmatively Furthering Fair Housing (AFFH) regulation reinstituted under the Biden Administration[30] and any other uses of special-purpose credit authorities to further equity.[31]

4. Eliminate the new Housing Supply Fund.[32]

- The Office of the Secretary should recommence proposed regulation put forward under the Trump Administration that would prohibit noncitizens, including all mixed-status families, from living in all federally assisted housing.[33] HUD's statutory obligations include providing housing for American citizens who are in need. HUD reforms must also ensure alignment with reforms implemented by other federal agencies where immigration status impacts public programs, certainly to include any reforms in the Public Charge regulatory framework administered by the U.S. Department of Homeland Security (DHS). Local welfare organizations, not the federal government, should step up to provide welfare for the housing of noncitizens.

- The Office of the Secretary should execute regulatory and subregulatory guidance actions, across HUD programs and applicable to all relevant stakeholders, that would restrict program eligibility when admission would threaten the protection of the life and health of individuals and fail to encourage upward mobility and economic advancement through household self-sufficiency. Where admissible in regulatory action, HUD should implement reforms reducing the implicit anti-marriage bias in housing assistance programs,[34] strengthen work and work-readiness requirements,[35] implement maximum term limits for residents in PBRA and TBRA programs,[36] and end Housing First[37] policies so that the department prioritizes mental health and substance abuse issues before jumping to permanent interventions in homelessness.[38] Notwithstanding administrative reforms, Congress should enact legislation that protects life and eliminates provisions in federal housing and welfare benefits policies that discourage work, marriage, and meaningful paths to upward economic mobility.

- The AS or PDAS for the Office of Policy Development and Research should suspend all external research and evaluation grants in the Office of Policy Development and Research and end or realign to another office any functions that are not involved in the collection and use of data and survey administration functions and do not facilitate the execution of regulatory impact analysis studies.

- FHA leadership should increase the mortgage insurance premium (MIP) for all products above 20-year terms and maintain MIP for all products below 20-year terms and all refinances. FHA should encourage wealth-building homeownership opportunities, which can be accomplished best through shorter-duration mortgages.[39] Ideally, Congress would contemplate a fundamental revision of FHA's statutory restriction of single-family housing mortgage insurance to first-time homebuyers.[40] This would include (with support from HUD leadership):

  1. Moving the Home Equity Conversion Mortgages (HECM) program once again to its own special risk insurance fund.

  2. Revising loan limit determinations.

  3. Providing statutory flexibility for shorter-term products that amortize principal earlier and faster.

- Statutorily restricting eligibility for first-time homebuyers and abandoning the affirmative obligation authorities erected for the single-family housing programs across federal agencies and government-sponsored enterprises.[41]

- The HUD Secretary should move the HUD Real Estate Assessment Center (REAC) from PIH to the Office of Housing, which already implements property standards in its multifamily housing lending programs through the multifamily accelerated processing (MAP) lending guidelines. Giving HUD the authority to streamline the enforcement of compliance with housing standards across the federal government and flexibility for physical inspections through private accreditation should also be considered.

- HUD should maintain its requested budget authority for modernization initiatives that are applicable to the Office of the Chief Information Officer and program offices across the department.

LONGER-TERM POLICY REFORM CONSIDERATIONS[42]

Congress has charged HUD principally with mandates for construction of the nation's affordable housing stock in addition to setting and enforcing standards for decent housing and fair housing enforcement. Regardless of intent, HUD's efforts have yielded mixed results at best. Even today, more than a half-century after Congress put enforcement of so-called fair housing in the hands of the HUD bureaucracy, implementation of this policy is muddled by the repeated application of affirmative race-based policies. Also, the production mandate for HUD's

housing portfolio has waned for decades with the department effectively working to maintain the public housing portfolio from the late 1990s when the Faircloth Amendment capped HUD's public housing portfolio.[43]

Longer-term reforms of HUD rental assistance programs should encourage choice and competition for renters, encourage participation by landlords where appropriate,[44] and encourage all non-elderly, able-bodied adults to move toward self-sufficiency. This can be pursued through regulations and legislative reforms that seek to strengthen work requirements, limit the period during which households are eligible for housing benefits, and add flexibility to rent payment terms to facilitate the movement of households toward self-sufficiency.

Obviously, using government vouchers or other such programs to expand housing choice options is not without its downsides. The turn toward mobility vouchers constitutes an abandonment of America's public housing stock, and efforts to increase competition in the public housing market must not come at the expense of local autonomy and the ability of cities, towns, neighborhoods, and communities to choose for themselves the sort of housing they want to allow. Freedom of association and self-government at the most local level possible must remain primary considerations in any conservative effort to increase competition in the public housing market.

Congress should also consider those areas in which federal policy negatively interacts with private markets, including when federal policy crowds out private-sector development and exacerbates affordability challenges that persist across the nation. It is essential that legislation provides states and localities maximal flexibility to pursue locally designed policies and minimize the likelihood of federal preemption of local land use and zoning decisions.

In the same manner, Congress should prioritize any and all legislative support for the single-family home. Homeownership forms the backbone of the American Dream. The purchase of a home is the largest investment most Americans will make in their lifetimes, and homeownership remains the most accessible way to build generational wealth for millions of Americans. For these reasons, American homeowners and citizens know best what is in the interest of their neighborhoods and communities. Localities rather than the federal government must have the final say in zoning laws and regulations, and a conservative Administration should oppose any efforts to weaken single-family zoning. Along the same lines, Congress can propose tax credits for the renovation or repair of housing stock in rural areas so that more Americans are able to access the American Dream of homeownership.

Additionally, enhanced statutory authorities for local autonomy should extend to the prioritizing of federal rental assistance subsidies that emphasize choice and mobility in housing voucher subsidies over static, site-based subsidies and provide authority for maximal flexibility to direct PHA land sales that involve the existing stock of public housing units. Congress must consider the future of the public

housing model. At best, any new public investments will provide maintenance funds to bring substandard housing units and properties up to livability standards but will still fail to address larger aims of upward mobility and dynamism for local housing markets where land can be sold by PHAs and put to greater economic use, thereby benefiting entire local economies through greater private investment, productivity and employment opportunities, and increased tax revenue.

Any long-term view of HUD's future must include maintaining the strong financial operations and reliable reporting that are needed to run a $50 billion-per-year agency. Before the Trump Administration, HUD effectively did not have a Chief Financial Officer (CFO) for eight years, and HUD's financial infrastructure inevitably deteriorated. The department's auditors were unable to conclude that HUD's internal operations were producing accurate financial reporting. The auditors had identified multiple material weaknesses and significant deficiencies in the department's internal financial controls. Overall, the deterioration of HUD's financial infrastructure led to a lack of accountability with respect to the use of taxpayer funds as well as to pervasive difficulties with operations and program implementation.

However, by hiring a new CFO from the private sector with a proven track record of visionary leadership, HUD was able to implement an agencywide governance structure that improved its financial processes and internal controls and harnessed the power of innovative new technologies to bring a modernized business mindset to the agency's financial infrastructure. By the end of the Trump Administration, for the first time in nearly a decade, HUD was able to address all of its previously identified material weaknesses, and the auditors were able to issue their first clean audit report on HUD's financial statements and internal controls.

Finally, and more fundamentally, Congress could consider a wholesale overhaul of HUD that contemplates devolving many HUD functions to states and localities with any remaining federal functions consolidated to other federal agencies (for example, by transferring loan guarantee programs to SBA; moving Indian housing programs to the Department of the Interior; moving rental assistance, mortgage insurance programs, and GNMA to a redesignated Housing and Home Finance Agency). Generally, this reform path could consolidate some programs, eliminate others that have failed to produce meaningful long-run results, and narrow the scope of many programs so that they are closer to what they were when they were created.

ENDNOTES

1. At a 1998 Senate hearing, then-HUD Secretary Andrew Cuomo acknowledged that the department "faced a competence gap" and had "the dubious distinction of being the only federal agency designated as 'high risk' by the General Accounting [now Government Accountability] Office (GAO)," even referencing the Section 8 rental subsidy as "on the brink of becoming the next savings and loan scandal," and explained how the department was stepping up enforcement efforts "focused on closing the competence gap by eliminating waste, fraud, and abuse." See "Testimony of Secretary Andrew Cuomo before the House Appropriations Subcommittee on VA, HUD, and Independent Agencies," March 25, 1998, https://archives.hud.gov/testimony/1998/tst32598.cfm (accessed March 4, 2023).
2. H.R. 7984, Housing and Urban Development Act of 1965, Public Law No. 89-117, 89th Congress, August 10, 1965, https://www.congress.gov/89/statute/STATUTE-79/STATUTE-79-Pg451.pdf (accessed March 4, 2023).
3. U.S. Department of Housing and Urban Development, *2023 Budget in Brief*, pp. 2 and 7, https://www.hud.gov/sites/dfiles/CFO/documents/2023_BudgetInBriefFINAL.pdf (accessed March 4, 2023).
4. For example, the Special Applications Center (SAC) located in Chicago, Illinois, was established in 1998 as a division of the Office of Public and Indian Housing to accept, review, and approve all nonfunded, noncompetitive applications and plans for demolition, disposition, and conversion of land subject to an annual contributions contract (ACC) in public housing.
5. The Secretary has delegated full authority for the Administration and enforcement of the Fair Housing Act to the Assistant Secretary of the Office of Fair Housing and Equal Opportunity but also has delegated limited assignment and decision-making authority to the General Counsel.
6. Effectively the HUD Chief Operating Officer and appointed by the President with Senate advice and consent.
7. The Office of Hearings and Appeals (OHA) is an independent adjudicatory office within the Office of the Secretary. Led by a Director who is appointed by the Secretary, it supervises the Administrative Judges of the Office of Appeals, the administrative law judges of the Office of Administrative Law Judges, and the OHA support staff. The HUD Secretary appoints administrative judges and administrative law judges in accordance with the Administrative Procedure Act, 5 U.S.C. Chapter 5, https://www.law.cornell.edu/uscode/text/5/part-I/chapter-5 (accessed March 4, 2023).
8. HUD currently has a Departmental Equity Assessment Working Group, supported with five FTEs funded by the OSDBU, "as part of the President's Executive Order 13985, Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." See U.S. Department of Housing and Urban Development, *2023 Congressional Justifications*, p. 35-15, https://www.hud.gov/sites/dfiles/CFO/documents/2023HUDCongressionalJustificationsFINALelectronicversion.pdf (accessed March 4, 2023), and President Joseph R. Biden Jr., Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," January 20, 2021, in *Federal Register*, Vol. 86, No. 14 (January 25, 2021), pp. 7009–7013, https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf (accessed March 4, 2023).
9. Interestingly, "[t]he 2023 President's Budget requests $748 thousand for CFBNP, which is $436 thousand less than the 2022 Annualized CR level. The Budget reflects total funding (carryover and new authority) of $1.2 million, $448 thousand less than 2022 total funding." U.S. Department of Housing and Urban Development, *2023 Congressional Justifications*, p. 35-16.
10. See H.R. 558, Stewart B. McKinney Homeless Assistance Act, Public Law No. 100-77, 100th Congress, July 22, 1987, https://www.govinfo.gov/content/pkg/STATUTE-101/pdf/STATUTE-101-Pg482.pdf (accessed March 5, 2023). Later renamed the McKinney–Vento Homeless Assistance Act.
11. Established under the Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301 et seq., https://www.law.cornell.edu/uscode/text/42 (accessed March 4, 2023).
12. S. 566, Cranston–Gonzalez National Affordable Housing Act, Public Law No. 101-625, 101st Congress, November 28, 1990, Title II, https://www.congress.gov/101/statute/STATUTE-104/STATUTE-104-Pg4079.pdf (accessed March 5, 2023).
13. S. 1, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law No. 91-646, 91st Congress, January 2, 1971, https://www.congress.gov/91/statute/STATUTE-84/STATUTE-84-Pg1894.pdf (accessed March 4, 2023). "The URA establishes the minimum Federal requirements for the acquisition of real property for Federally-funded programs and projects, and for the relocation of persons who must move from

their homes, businesses, or farms as a direct result of acquisition, rehabilitation, or demolition for a Federally-funded program or project." U.S. Department of Housing and Urban Development, HUD Exchange, "49 CFR Part 24–URA Regulations," published February 2005, https://www.hudexchange.info/resource/804/ura-and-real-property-acquisition-policies-act-49-cfr-part-24/ (accessed March 4, 2023). HUD is one of the 18 federal departments and agencies that "are subject to the Uniform Act." U.S. Department of Transportation, Federal Highway Administration, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," *Federal Register*, Vol. 84, No. 243 (December 18, 2019), pp. 69466–69521, esp. p. 69484, https://www.govinfo.gov/content/pkg/FR-2019-12-18/pdf/2019-25558.pdf (accessed March 4, 2023).

14. H.R. 3219, Native American Housing Assistance and Self-Determination Act of 1996, Public Law No. 104-330, 104th Congress, October 26, 1996, https://www.congress.gov/104/plaws/publ330/PLAW-104publ330.pdf (accessed March 4, 2023).
15. U.S. Department of Housing and Urban Development, *2023 Congressional Justifications*, p. 6-1. The U.S. Housing Act of 1937 (Wagner–Steagall Act) established the origins of locally chartered housing agencies that administer federal funding for various rental assistance programs—a quintessentially progressive New Deal–era policy that expanded the administrative state's powers to the housing market—with the primary legislative intent of eradicating slum housing in urban areas, boosting jobs, and providing housing for the working poor. 42 U.S.C. §§ 1437 et seq., https://www.law.cornell.edu/uscode/text/42 (accessed March 4, 2023). A decade later, the Housing Act of 1949 codified federal standards for housing livability—a rationale that HUD and federal legislators have continued to use to justify federal intervention in housing—establishing as a national policy objective the provision of a minimum standard of housing quality for all Americans. This legislation also statutorily established many of the rural housing programs that are administered at USDA and expanded programs facilitating the removal of slum housing in urban areas. 42 U.S.C. §§ 1441 et seq., https://www.law.cornell.edu/uscode/text/42 (accessed March 4, 2023).
16. U.S. Department of Housing and Urban Development, *2023 Congressional Justifications*, pp. 1-2 and 2-2.
17. The National Housing Act of 1934 established the FHA and the statutory authority for the secondary market. The main stated premise was to stimulate jobs and facilitate the housing and construction sector during the Great Depression. 42 U.S.C. §§ 1701 et seq., https://www.law.cornell.edu/uscode/text/12 (accessed March 4, 2023).
18. 42 U.S.C. §§ 2000d et seq., https://www.law.cornell.edu/uscode/text/42 (accessed March 4, 2023).
19. 29 U.S.C. §§ 701 et seq., https://www.law.cornell.edu/uscode/text/29 (accessed March 4, 2023).
20. HUD's Departmental Enforcement Center (DEC) is led by a Director. It was established in 1998 as part of a broader effort to streamline and consolidate functions at HUD and was later merged with the Office of General Counsel. The DEC "is comprised of the Office of the Director, the Compliance Division, the Operations Division and five Satellite Offices" and describes its mission as "assuring the highest standards of ethics, management and accountability in the resolution of HUD's troubled properties." U.S. Department of Housing and Urban Development, Departmental Enforcement Center, "Program Offices: Departmental Enforcement Center," https://www.hud.gov/program_offices/enforcement (accessed March 4, 2023).
21. H.R. 5334, Housing and Community Development Act of 1992, Public Law No. 102-1017, 102nd Congress, October 28, 1992, Title X, https://www.congress.gov/102/statute/STATUTE-106/STATUTE-106-Pg3672.pdf (accessed March 4, 2023).
22. H.R. 8588, Inspector General Act of 1978, Public Law No. 95-452, 95th Congress, October 12, 1978, https://www.congress.gov/95/statute/STATUTE-92/STATUTE-92-Pg1101.pdf (accessed March 4, 2023).
23. Guiding questions: What immediate administrative reforms of HUD and its programs can be made with high probability of success? What short-term legislative reforms can be proposed that, in tandem with administrative reforms, would achieve the HUD vision/mission objective? What HUD offices should be eliminated and/or realigned to reduce any redundancy that may persist in programmatic functions?
24. Wholly aside from reforms that would require legislation, the next Administration must ensure that key political appointees are able to acquit themselves as change agents to execute administrative reforms. Otherwise, whether because of a sheer lack of skill and expertise or simply a lack of will and philosophical alignment with reforms, staff may frustrate the efforts of committed political appointee staff and leadership to execute substantive administrative reforms. To achieve the policy and regulatory reforms outlined in this chapter, political appointees must be carefully placed in positions that reflect not only technical, market/industry, and operational expertise, but also a shared will and commitment.

25. Process must prioritize where political leadership can implement administrative reforms through regulatory action and subregulatory guidance reforms.
26. China and other foreign nations should not be able to disrupt our nation's housing markets, including by artificially driving up prices and reducing affordability and access to housing for Americans who are crowded out of the market by such market participation.
27. These initiatives are maintained under such designations as diversity, equity, and inclusion (DEI); critical race theory (CRT); black, indigenous, Pacific Islander, and other people of color (BIPOC); and environmental, social, and governance (ESG).
28. At a minimum, these efforts duplicate what the federal government already collects and assesses; at worst, they institute arbitrary procedures in real estate appraisal practices that undermine integrity and perversely introduce arbitrary biases into what should be an unbiased system for determining financial value.
29. Revise regulatory and subregulatory guidance, where applicable within statutory authorities, that adds unnecessary delay and costs to the construction and development of new housing and has been estimated to account for about 40 percent of new housing unit costs in multifamily housing.
30. The Biden Administration has issued a proposed rule to replace the Trump Administration's "Preserving Community and Neighborhood Choice" rule that had repealed earlier rules expanding AFFH enforcement. See U.S. Department of Housing and Urban Development, Office of Fair Housing, "Preserving Community and Neighborhood Choice," Final Rule, *Federal Register*, Vol. 85, No. 153 (August 7, 2020), pp. 47899–47912, https://www.govinfo.gov/content/pkg/FR-2020-08-07/pdf/2020-16320.pdf (accessed March 5, 2023), and U.S. Department of Housing and Urban Development, Office of the Secretary, "Affirmatively Furthering Fair Housing," Proposed Rule, *Federal Register*, Vol. 88, No. 27 (February 9, 2023), pp. 8516–8590, https://www.govinfo.gov/content/pkg/FR-2015-07-16/pdf/2015-17032.pdf (accessed March 5, 2023).
31. Certain pilot initiatives may encourage greater take-up of loan products designed for faster equity accumulation, including loans with shorter terms and accelerated amortization schedules. In concept, the FHA's Home Equity Accelerator Loan (HEAL) and Good Neighbor Next Door (GNND) pilot initiatives might lead to meaningful wealth generation for first-time buyers, but they should be available to all eligible households only when they do not arbitrarily discriminate based on race or other characteristics.
32. Housing supply does remain a problem in the U.S., but constructing more units at the low end of the market will not solve the problem. Investors and developers can deliver at more efficient cost new units that will allow for greater upward mobility of rental and ownership housing stock and better target increased construction of mid-tier rental units. Further, and more fundamental to the housing supply challenge in markets across the U.S., localities can consider revising land use, zoning, and building regulations that constrict new housing development, adding time delays and costs that impede construction. Federal housing policy should get out of the way where possible and minimize the distortive impact that stimulating greater demand through loose lending can have in driving up housing prices for households that are looking for affordable entry into the housing market.
33. U.S. Department of Housing and Urban Development, Office of the Secretary, "Housing and Community Development Act of 1980: Verification of Eligible Status," Proposed Rule, *Federal Register*, Vol. 84, No. 91 (May 10, 2019), pp. 20589–20595, https://www.govinfo.gov/content/pkg/FR-2019-05-10/pdf/2019-09566.pdf (accessed March 5, 2023).
34. Reforms should contemplate rent payment flexibilities, allow escrow savings, and set maximum term limits that can reduce implicit penalties for increasing household incomes over eligibility terms for housing assistance and reweight waiting-list prioritization for two-parent households.
35. Some PHAs have been able to implement work requirements and term limit policies in various congressionally authorized demonstration programs, notably the Moving to Work (MTW) demonstration program established in 1996 for 39 PHAs (Congress has since authorized another 100 PHAs) in which participating MTW PHAs were given authority to implement rent reforms, work requirements and other experimental policies in rental assistance programs along with flexibilities in the use of capital and operating appropriations.
36. The FSS program has a general five-year term with a possible two-year extension, which could be applied at the term limit for overall benefits, and certain PHAs have imposed five-year to seven-year term limits. Families in these programs build escrow savings during their term eligibility that helps to facilitate successful transitions to family self-sufficiency and unassisted housing.

37. HUD should implement administrative changes in regulation and guidance and seek statutory authority to end all Housing First directives of Continuum of Care (CoC) grantees and contract homelessness providers in addition to establishing restrictions on local Housing First policies where HUD grant funds are used.
38. The U.S. Interagency Council on Homelessness (USICH) was established in the 1990s, and numerous Administrations have devoted enormous resources to the Housing First model, experimenting with various ways to provide federally financed rapid rehousing and permanent housing opportunities. Housing First is a far-left idea premised on the belief that homelessness is primarily circumstantial rather than behavioral. The Housing First answer to homelessness is to give someone a house instead of attempting to understand the underlying causes of homelessness. Federal intervention centered on Housing First has failed to acknowledge that resolving the issue of homelessness is often a matter of resolving mental health and substance abuse challenges. Instead of the permanent supportive housing proffered by Housing First, a conservative Administration should shift to transitional housing with a focus on addressing the underlying issues that cause homelessness in the first place.
39. The Senate Low-Income First-Time Homebuyers (LIFT) Act would address this policy goal. See S. 2797, Low-Income First-Time Homebuyers Act of 2021 (LIFT Homebuyers Act of 2021), 117th Congress, introduced September 22, 2021, https://www.congress.gov/117/bills/s2797/BILLS-117s2797is.pdf (accessed March 5, 2023).
40. FHA did not facilitate the widespread use of 30-year mortgages until the 1950s when, interacting with Federal Reserve policies, federal agencies began broader adoption of the mortgages, which, despite lowering the monthly repayment terms, result in slow equity accumulation and wealth-building opportunities.
41. The Housing and Economic Recovery Act of 2008 fundamentally revised the scope of federal regulation in the nation's housing finance system, placing Fannie Mae and Freddie Mac under the purview of a newly established Federal Housing Finance Agency (FHFA) and establishing a Housing Trust Fund (HTF) that is administered in the HUD Office of Community Planning and Development. See H.R. 3221, Housing and Economic Recovery Act of 2008, Public Law No. 110-289, 110th Congress, July 30, 2008, https://www.congress.gov/110/plaws/publ289/PLAW-110publ289.pdf (accessed March 5, 2023).
42. Guiding questions: What reforms should be proposed that could be accomplished within five years? What reforms can be done administratively, and what reforms would need legislative authorization? Are there functions that HUD administers that could be achieved more effectively at another department or agency? What big-picture reforms should be proposed that might take more than five years that would reorganize HUD and its programs to meet the objectives in the vision or mission? What would occur in the absence of these public finance subsidies? How much crowd-out do these subsidies create in the market? Would America be a seriously underhoused nation without these subsidies? Who are the policies intended to benefit? What organizational changes must be made?
43. The Faircloth Amendment (Quality Housing and Work Responsibility Act of 1998) amended the Housing Act of 1937 to maintain public housing units at 1999 levels, preventing housing authorities from maintaining more public housing than they did then. H.R. 4194, Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law No. 105-276, 105th Congress, October 21, 1998, Title V, https://www.congress.gov/105/plaws/publ276/PLAW-105publ276.pdf (accessed March 5, 2023). In recent years, the statutory restriction on new construction of public housing units has been circumvented through some narrow uses of preservation programs such as the Rental Assistance Demonstration (RAD) program, initially authorized in 2012 and reauthorized several times since under higher program unit conversion caps. Congress also provided paths for renewal and continuation of a portion of existing public housing; project/site-based housing stock (refinancing with long-term HAP contract commitments); and Section 8 units through the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). H.R. 2158, Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Public Law No. 105-65, 105th Congress, October 27, 1997, Title V, https://www.congress.gov/105/plaws/publ65/PLAW-105publ65.pdf (accessed March 5, 2023).
44. As the evolution of HUD rental assistance transitions away from the public housing model toward housing choice vouchers, there should be adequate landlord participation to ensure that the supply of housing units for rent in these programs meets the demand for rent among eligible tenants. This issue has been addressed in various ways, including by a task force instituted at the department during the Trump Administration, but could likely remain a challenge in the administration of the program.

16

DEPARTMENT OF THE INTERIOR

William Perry Pendley

The U.S. Department of the Interior (DOI) oversees, manages, and protects the nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors the nation's trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities.

AGENCY OVERVIEW

DOI's purview encompasses more than 500 million acres of federal lands, including national parks and national wildlife refuges; 700 million acres of subsurface minerals; 1.7 billion acres of the Outer Continental Shelf (OCS); 23 percent of the nation's energy; water in 17 western states; and trust responsibilities for 566 Indian tribes and Alaska Natives. DOI's 2024 budget request totals $18.9 billion, an increase of $2 billion, or 12 percent, more than the 2023 enacted level. The budget also provides an estimated $12.6 billion in permanent funding in 2024. In 2024, DOI will generate receipts of $19.6 billion.

A "Home Department" had been considered in 1789 and urged by Presidents over the decades until DOI's creation in 1849. The variety of its early responsibilities—the Indian Bureau, the General Land Office, the Bureau of Pensions, and the Patent Office, among others—earned it various nicknames, including "Great Miscellany," "hydra-headed monster," and "Mother of Departments."[1] Its mission became more focused on natural resources with the rise of the conservation movement in the early 20th century; however, it kept its historic (since the days of the Founding Fathers) role as overseer of vast working landscapes involving grazing,

logging, mining, oil, and gas and, with the Bureau of Reclamation in 1902, as the nation's dam builder. Today, DOI has 70,000 employees in approximately 2,400 locations with offices across the United States, Puerto Rico, and U.S. Territories and Freely Associated States.

Historically, DOI operated in a bipartisan manner consistent with the laws enacted by Congress pursuant to its powers under the Property Clause.[2] Thus, DOI fulfilled its statutory responsibilities in a manner that ensured the ability of western states, counties, and communities to be sustained by both economic and recreational activities on neighboring federal lands, especially given that in some rural western counties, federal lands constituted 50, 60, 70, 80—even 90 percent of the county's landmass.[3]

That ended with the Administration of President Jimmy Carter, who, beholden to environmental groups that supported his election, adopted DOI policies consistent with their demands, much to the horror of western governors, most of whom were Democrats. President Ronald Reagan campaigned against this "War on the West," declared himself a "Sagebrush Rebel," and, on taking office,[4] quelled the rebellion by reversing Carter Administration policies. President George H. W. Bush distanced himself from Reagan's western policies, committed to a "kinder and gentler America," and proclaimed his desire to be "the environmental President," which resulted in changes at the his Administration's DOI—again, much to the dismay of westerners.[5] President Bill Clinton resumed Carter's "War on the West," epitomized by his DOI's deploying of wolves into the states bordering Yellowstone National Park; the decreed death of a world-class mine in Montana; and the designation of a vast national monument in Utah over the objections of Utah leaders—but with the support of the Hollywood elite.[6]

Although Texas Governor George W. Bush and former Wyoming Representative Dick Cheney (R–WY) campaigned in 2000 against Clinton's worst outrages, including the Utah monument, there was no significant ratcheting back of DOI policies that were either objected to by westerners or contrary to the express provisions of federal statutes. President Barack Obama's DOI resumed the anti-economic federal lands policies activated by Carter and amplified by Clinton; however, Obama's DOI's antipathy to oil and gas activity on federal lands as mandated by Congress could not have come at a worse time.

After the demonstrated success of fracking on Bureau of Land Management (BLM) acreage in Wyoming in 1993, the fracking revolution soon swept the nation,[7] yielding massive discoveries on state and private land from coast to coast, but not, thanks to Obama, on western federal lands.[8] President Donald Trump, on the other hand, immediately ordered his DOI to comply with federal law, conduct congressionally mandated lease sales, and seek to achieve energy dominance or independence. Thanks in part to the success of oil and gas operations on federal land in the West, the United States achieved energy security for the first time since 1957 in 2019.[9]

President Joe Biden's DOI, as is well documented, abandoned all pretense of complying with federal law regarding federally owned oil and gas resources. Not since the Administration of President Harry S. Truman—prior to creation of the OCS oil and gas program—have fewer federal leases been issued.[10]

At DOI, not since the Reagan Administration was the radical environmental agenda (first implemented by Carter, resumed by Clinton, and revitalized by Obama) rolled back as substantially as it was by President Trump. Trump's DOI change affected not only oil and gas leasing, as noted above, but all statutory responsibilities of its various agencies, bureaus, and offices. Thus, whether the statutory mandate was to promote economic activity, to ensure and expand recreational opportunities, or to protect valuable natural resources, including, for example, parks, wilderness areas, national monuments, and wild and scenic areas, efforts were expended, barriers were removed, and career employees were aided in the accomplishment of those missions.

Unfortunately, Biden's DOI is at war with the department's mission, not only when it comes to DOI's obligation to develop the vast oil and gas and coal resources for which it is responsible, but also as to its statutory mandate, for example, to manage much of federal land overseen by the BLM pursuant to "multiple use" and "sustained yield" principles.[11] Instead, Biden's DOI believes most BLM land should be placed off-limits to all economic and most recreational uses. Worse yet, Biden's DOI not only refuses to adhere to the statutes enacted by Congress as to how the lands under its jurisdiction are managed, but it also insists on implementing a vast regulatory regime (for which Congress has not granted authority) and overturning, by unilateral regulatory action, congressional acts that set forth the productive economic uses permitted on DOI-managed federal land.

BUDGET STRUCTURE

At $18.9 billion, DOI's 2024 proposed budget is small relative to many other federal agencies. On the other side of the ledger, the DOI forecasts it will generate more than $19.6 billion in "offsetting receipts" from oil and gas royalties, timber and grazing fees, park user fees, and land sales, among other sources. Most of the proposed allocations are divided among nine bureaus.

Bureau of Indian Affairs. Fulfills Indian trust responsibilities on behalf of 566 Indian tribes; supports natural resource education, law enforcement, and social service programs delivered by tribes; operates 182 elementary and secondary schools and dormitories and 29 tribally controlled community colleges, universities, and post-secondary schools.

Bureau of Land Management. Manages and conserves resources for 245 million acres of public land and 700 million acres of subsurface federal mineral estate, including energy and mineral development, forest management, timber and biomass production, and wild horse and burro management.

Bureau of Ocean Energy Management. Manages access to renewable and conventional energy resources of the Outer Continental Shelf, including more than 6,400 fluid mineral leases on approximately 35 million OCS acres; issues leases for 24 percent of domestic crude oil and 8 percent of domestic natural gas supply; oversees lease and grant issuance for offshore renewable energy projects.

Bureau of Reclamation. Manages, develops, and protects water and related resources, including 476 dams and 337 reservoirs; delivers water to one in every five western farmers and more than 31 million people; is America's second-largest producer of hydroelectric power.

Bureau of Safety and Environmental Enforcement. Regulates offshore oil and gas facilities on 1.7 billion acres of the Outer Continental Shelf; oversees oil spill response; supports research on technology for oil spill response.

National Park Service. Maintains and manages 401 natural, cultural, and recreational sites, 26,000 historic structures, and more than 44 million acres of wilderness; provides outdoor recreation; provides technical assistance and support to state and local programs.

Office of Surface Mining Reclamation and Enforcement. Regulates coal mining and site reclamation; provides grants to states and tribes for mining oversight; mitigates the effects of past mining.

U.S. Fish and Wildlife Service. Manages the 150-million-acre National Wildlife Refuge System; manages 70 fish hatcheries and other related facilities for endangered species recovery; protects migratory birds and some marine mammals.

U.S. Geological Survey. Conducts scientific research in ecosystems, climate, and land-use change, mineral assessments, environmental health, and water resources; produces information about natural hazards (earthquakes, volcanoes, and landslides); leads climate change research for the department.

RESTORING AMERICAN ENERGY DOMINANCE

Given the dire adverse national impact of Biden's war on fossil fuels, no other initiative is as important for the DOI under a conservative President than the restoration of the department's historic role managing the nation's vast storehouse of hydrocarbons, much of which is yet to be discovered. The U.S. depends on reliable and cheap energy resources to ensure the economic well-being of its citizens, the vitality of its economy, and its geopolitical standing in an uncertain and dangerous world. Not only are valuable natural resources owned generally by the American people involved, so too are those owned separately by American Indian tribes and individual American Indians, both of which have been injured by Biden's illegal actions.

The federal government owns 61 percent of the onshore and offshore mineral estate of the U.S., but only 22 percent of the nation's oil and 12 percent of U.S. natural gas comes from those federal lands and waters—and even that amount is

declining. Additionally, 42 percent of coal production takes place on federal lands in 11 states.[12] DOI manages a subsurface mineral estate of 700 million acres onshore and 1.76 billion acres offshore, for a total of 2.46 billion acres.

The total land area of the U.S. is 2.263 billion acres. Private and state lands, at 1.563 billion acres, make up only 39 percent of the total onshore and offshore subsurface area of the United States. Oil, natural gas, coal, and other minerals on federal lands and waters are managed by the Bureau of Land Management, Bureau of Ocean Energy Management, and Office of Surface Mining Reclamation and Enforcement; these agencies' responsibilities frequently overlap with resource management by the U.S. Forest Service in the U.S. Department of Agriculture, state governments, and private property owners.

Biden is "aligning the management of…public lands and waters…to support robust climate action," as envisioned in Executive Orders 14008 and 13990.[13] One of his first actions was to ban federal coal, oil, and natural gas leasing on federal lands and waters to fulfill his campaign promise of "no federal oil," followed by actions from Interior Secretary Deb Haaland to rescind the Trump Administration's Energy Dominance Agenda. To this end, DOI unilaterally overhauled resource management plans, lease sales, fees, rents, royalty rates, bonding requirements, and permitting processes to prevent new production of coal, oil, and natural gas on federal lands and waters; to dramatically increase production of solar and wind energy; and to accomplish its "30 by 30," "America the Beautiful" agenda to remove federal lands from "multiple"—that is, productive—use.

DOI is abusing National Environmental Policy Act (NEPA)[14] processes, the Antiquities Act,[15] and bureaucratic procedures to advance a radical climate agenda, ostensibly to reduce greenhouse gas emissions, for which DOI has no statutory responsibility or authority.[16] The Federal Land Policy and Management Act (FLPMA), Outer Continental Shelf Lands Act (OSCLA), General Mining Law,[17] and other congressional acts clearly set forth multiple-use principles and processes that include production of coal, oil, natural gas, and other minerals, as legitimate activities consistent with the welfare of all Americans and of environmental stewardship.

Biden's DOI is hoarding supplies of energy and keeping them from Americans whose lives could be improved with cheaper and more abundant energy while making the economy stronger and providing job opportunities for Americans. DOI is a bad manager of the public trust and has operated lawlessly in defiance of congressional statute and federal court orders.

ADMINISTRATION PRIORITIES

Rollbacks. A new Administration must immediately roll back Biden's orders, reinstate the Trump-era Energy Dominance Agenda, rescind Secretarial Order (SO) 3398, and review all regulations, orders, guidance documents, policies, and

similar agency actions made in compliance with that order.[18] Meanwhile, the new Administration must immediately reinstate the following Trump DOI secretarial orders:

- SO 3348: Concerning the Federal Coal Moratorium;[19]
- SO 3349: American Energy Independence;[20]
- SO 3350: America-First Offshore Energy Strategy;[21]
- SO 3351: Strengthening the Department of the Interior's Energy Portfolio;[22]
- SO 3352: National Petroleum Reserve—Alaska;[23]
- SO 3354: Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program;[24]
- SO 3355: Streamlining National Environmental Policy Reviews and Implementation of Executive Order 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects";[25]
- SO 3358: Executive Committee for Expedited Permitting;[26]
- SO 3360: Rescinding Authorities Inconsistent with Secretary's Order 3349, "American Energy Independence;"[27]
- SO 3380: Public Notice of the Costs Associated with Developing Department of the Interior Publications and Similar Documents;[28]
- SO 3385: Enforcement Priorities;[29] and
- SO 3389: Coordinating and Clarifying National Historic Preservation Act Section 106 Reviews.[30]

Actions. At the same time, the new Administration must:

- **Reinstate** quarterly onshore lease sales in all producing states according to the model of BLM's IM 2018–034, with the slight adjustment of including expanded public notice and comment.[31] The new Administration should work with Congress on legislation, such as the Lease Now Act[32] and

ONSHORE Act,[33] to increase state participation and federal accountability for energy production on the federal estate.

- **Conduct** offshore oil and natural gas lease sales to the maximum extent permitted under the 2023–2028 lease program,[34] with the possibility to move forward under a previously studied but unselected plan alternative.[35]

- **Develop** immediately and finalize a new five-year plan, while working with Congress to reform the OCSLA by eliminating five-year plans in favor of rolling or quarterly lease sales.

- **Review** all resource management plans finalized in the previous four years and, when necessary, select studied alternatives to restore the multi-use concept enshrined in FLPMA and to eliminate management decisions that advance the 30 by 30 agenda.

- **Set** rents, royalty rates, and bonding requirements to no higher than what is required under the Inflation Reduction Act.[36]

- **Comply** with the Alaska National Interest Lands Conservation Act (ANILCA) and the Tax Cuts and Jobs Act of 2017 to establish a competitive leasing and development program in the Coastal Plain, an area of Alaska that was set aside by Congress specifically for future oil and gas exploration and development. It is often referred to as the "Section 1002 Area" after the section of ANILCA that excludes the area from Arctic National Wildlife Refuge's wilderness designation.[37]

- **Conclude** the programmatic review of the coal leasing program, and work with the congressional delegations and governors of Wyoming and Montana to restart the program immediately.[38]

- **Abandon** withdrawals of lands from leasing in the Thompson Divide of the White River National Forest, Colorado; the 10-mile buffer around Chaco Cultural Historic National Park in New Mexico (restoring the compromise forged in the Arizona Wilderness Act[39]); and the Boundary Waters area in northern Minnesota if those withdrawals have not been completed.[40] Meanwhile, revisit associated leases and permits for energy and mineral production in these areas in consultation with state elected officials.

- **Require** regional offices to complete right-of-way and drilling permits within the average time it takes states in the region to complete them.

Rulemaking. The following policy reversals require rulemaking:

- **Rescind** the Biden rules and reinstate the Trump rules regarding:

  1. BLM waste prevention;
  2. The Endangered Species Act rules defining Critical Habitat and Critical Habitat Exclusions;[41]
  3. The Migratory Bird Treaty Act;[42] and
  4. CEQ reforms to NEPA.[43]

- **Reinstate** President Trump's plan for opening most of the National Petroleum Reserve of Alaska to leasing and development.

Personnel Changes. The new Administration should be able to draw on the enormous expertise of state agency personnel throughout the country who are capable and knowledgeable about land management and prove it daily. States are better resource managers than the federal government because they must live with the results. President Trump's Schedule F proposal[44] regarding accountability in hiring must be reinstituted to bring success to these reforms. Consistent with the theme of bringing successful state resource management examples to the forefront of federal policy, DOI should also look for opportunities to broaden state–federal and tribal–federal cooperative agreements.

IMMEDIATE ACTIONS

BLM Headquarters. BLM headquarters belongs in the American West. After all, the overwhelming majority of the 245 million surface acres (10 percent of the nation's landmass) managed by the agency lies in the 11 western states and Alaska: A mere 50,000 surface acres lie elsewhere. Moreover, 97 percent of BLM employees are located in the American West.

Thus, the Trump Administration's decision to relocate BLM headquarters from Washington, D.C., to the West was the epitome of good governance: That is, it was not only well-informed, but it was also implemented efficiently, effectively, and with an eye toward affected career civil servants. Plus, despite overblown chatter from the inside-the-Beltway media, Congress, with bipartisan support, approved funding the move.

Meanwhile, state, tribal, and local officials, the diverse collection of stakeholders who use public lands and western neighbors became accustomed to having top BLM decision-makers in Grand Junction, Colorado, rather than up to four

time zones away. All of them also appreciated that the BLM's top subject matter experts were located not in the District of Columbia, but in the western states that most need their knowledge and expertise. Westerners no longer had to travel cross country to address BLM issues. Neither did officials in the West, closest to the resources and people they manage.

On July 16, 2019, Secretary of the Interior David L. Bernhardt delivered to Congress the proposal for the relocation of nearly 600 BLM headquarters employees. On August 10, 2020, Secretary Bernhardt formally established the Robert F. Burford headquarters—named after the longest-serving BLM director, a Grand Junction native—with a staff of 41 senior officials and assistants. Another 76 positions were assigned to BLM state offices in western communities such as Billings, Montana; Boise, Idaho; Reno, Nevada; Salt Lake City, Utah; and Cheyenne, Wyoming, to meet critical needs. Scores of other positions were assigned to the states that required BLM expertise. For example, wild horse and burro professionals were relocated to Nevada, home to nearly 60 percent of these western icons. Sixty-one positions were retained in Washington, D.C., to address public, congressional, and regulatory affairs, Freedom of Information Act compliance, and budget development.

Despite the dislocating impact of the COVID-19 pandemic, the BLM successfully filled hundreds of long-vacant positions, as well as those that opened because of the move West. The BLM saw notable numbers of applicants for these positions—so numerous that the BLM capped the number of eligible applicants to no more than 50. Obviously, reduced commuting times (often from hours to mere minutes), lower cost of living, and opportunity to access vast public lands for recreation made these jobs attractive to potential employees. Many, if not most, applicants stated they would not have applied had the positions been based in Washington, D.C. At the same time, western positions attracted those with the skills needed to meet the BLM's multiple-use, sustained-yield mandate, disproving the claim that the BLM was suffering a "brain drain."

The Trump Administration recognized that, despite its attractions, not everyone employed by BLM in Washington, D.C., could move West. The Administration applied a hands-on approach, with all-employee briefing and question-and-answer sessions, regular email communications, and a website devoted to frequently asked questions. Two human resources teams aided employees wishing to remain in federal jobs in the D.C. area: All received new opportunities.

The BLM's move West incurred no legal challenges, no formal Equal Employment Opportunity or U.S. Merit Systems Protection Board complaints, and no adverse union activity. It is hard to please everyone, but the Trump Administration's BLM did just that, putting the lie to assertions, by some, that the BLM was trying to "fire" federal employees.

The total cost of $17.9 million for relocation incentives, permanent change-of-station moves, temporary labor, travel, printing, rent, supplies, equipment, and

other contracts will save money for the American people. For example, in fiscal 2020, the BLM estimated $1.6 million in travel costs savings, which will grow slightly over time, and $1.9 million in savings from its terminated lease in Washington, D.C. Furthermore, BLM estimated that, by October 2022, the BLM move West would generate a net savings of $3.5 million, which, the following fiscal year, would increase to $10.3 million.

Those funds can be devoted to reducing the risk of wildfires, increasing recreational opportunities, conserving public lands, and addressing tough issues such as wild horses and burros. Moreover, those funds will be used more wisely thanks to the efficiency of senior, seasoned managers working closely with BLM field employees in near daily contact with western officials, stakeholders, and neighbors.

In late 2022, Secretary of the Interior Deb Haaland announced the return of headquarters and scores of highly paid, senior employees to Washington, D.C. Subsequently, BLM Director Tracy Stone-Manning revealed 56 BLM jobs in BLM's "Western Headquarters" and 70 other BLM jobs will remain in Grand Junction, an increase of 15 from the 41 announced by Trump's BLM in 2019, and an increase of 40 other jobs above the 16 first announced by Biden officials. Thus, the director, the two deputy directors, six of seven assistant directors (ADs) and their staffs are now or soon will be in Washington.

The Biden Administration failed to recognize the wisdom of having BLM's leadership, including its director, deputy directors, and ADs in the West. That is why, decades ago, the AD and staff in charge of BLM's firefighters were relocated to Boise, Idaho, where they remain. Not so the head of BLM law enforcement and security, who supervises over 200 uniformed law enforcement rangers and 76 special agents stationed mainly in 11 western states and Alaska. Haaland moved that official to Washington, far from state troopers, county sheriffs and deputies, and city police with whom BLM law enforcement officers keep the peace in the West's wide-open spaces. BLM's "top cop" might as well be on the moon.

The AD in charge of oil, gas, and minerals was also moved to Washington, D.C., notwithstanding that most oil, gas, and minerals are in the West and Alaska; New Mexico's Permian Basin, for example, is second only to Alaska in petroleum potential, and Montana and Wyoming's Powder River Basin contains the world's best low-sulfur coal. The AD responsible for wild horses and burros was moved east as well, despite the fact that the uncontrolled growth of wild horses and burros poses an existential threat to public lands; 60 percent of the nation's wild horses are in Nevada,[45] but thousands are in nine other western states. There is no way these and other ADs can professionally manage issues thousands of miles and multiple time zones away.

It is not just effective and responsive management that has been lost; Colorado lost its chance to become a must-visit destination for BLM's stakeholders. Those seeking to develop world-class mineral deposits in Minnesota or another Prudhoe

Bay in Alaska; to expand recreation across BLM's vast, diverse, and unique landscapes; or to manage timber and rangelands to prevent wildfires, would all journey to Grand Junction. Convention opportunities on Colorado's western slope would abound for BLM's disparate constituencies to congregate and meet with BLM leadership. The Western States Sheriffs' Association, for example, whose annual gathering attracts hundreds of law enforcement officers from 17 western and plains states might have moved its event to Grand Junction.

Law Enforcement Officers. In 2002, at the direction of the Secretary of the Interior in the days following the 9/11 attack, the Inspector General (IG) for DOI made a series of department-wide recommendations regarding law enforcement. Then-Secretary of the Interior Gale Norton ordered adoption of those recommendations, which drew strong bipartisan support from Congress. Over the years, most were implemented. One, however, remained undone: placing all BLM law enforcement officers (LEOs), that is, its 212 Law Enforcement Rangers and 76 Special Agents, in an exclusively law enforcement chain of command.

This was not just the IG's recommendation in 2002, but that of every IG who followed. It is also the strong recommendation of the department's top LEO. Moreover, it has been the urgent recommendation of law enforcement professionals across the country, especially in the West, for decades, including the Western States Sheriffs Association. Unfortunately, over time, BLM leadership stonewalled, adhering to a haphazard system in which LEOs reported to non-LEO superiors, including not only state directors, but also district and field managers with expertise in other fields—range management or petroleum engineering, for example—with only 24 hours of law enforcement study. Obviously, those managers lack a comprehensive understanding of law enforcement issues—constitutional, legal, and tactical. In addition, they do not uniformly apply or enforce rules of conduct or ethical standards for LEOs and special agents, leading to weakened *esprit de corps* and morale. Worse yet, because of their duties as managers of the multiple-use lands under their jurisdiction, they are exposed to conflicts of interests and may intentionally or unintentionally prevent LEOs from investigating violations or applying the law.

In the final days of the Trump Administration, Secretary David L. Bernhardt ordered, and Deputy Director William Perry Pendley implemented, the IG's recommendation. Of course, leadership heads exploded; they were furious with their loss of authority, not to mention subordinates and budgets. Unfortunately, in the first days of the Biden Administration, BLM Deputy Director Mike Nedd suspended Pendley's order.

Nonetheless, LEOs, the BLM, and westerners want LEOs—who make life-and-death decisions—to be as well-trained and well-equipped as possible. They should report to a professional, expert, and knowledgeable chain of command. After all, they protect visitors to BLM lands and the natural and cultural resources of those lands, as well as the employees who manage those lands.

BLM's LEOs must keep in touch, work closely, and coordinate with fellow federal, state, and local law enforcement officers. In the Trump Administration, they joined state and local law enforcement in arresting dangerous suspects in Cortez, Colorado; responded to a request from a rural sheriff in Arizona to rescue a family stuck in freezing temperatures; and, teamed up in an all-hands-on-deck effort to locate a missing American Indian teenager in rural Montana. More important, western LEOs need the assurance that the BLM LEOs with whom they work are professionals who report through a professional chain of command.

Wild Horses and Burros. In 1971, Congress ordered the BLM to manage wild horses and burros to ensure their iconic presence never disappeared from the western landscape. For decades, Congress watched as these herds overwhelmed the land's ability to sustain them, crowded out indigenous plant and other animal species, threatened the survival of species listed under the Endangered Species Act, invaded private and permitted public land, disturbed private property rights, and turned the sod into concrete. BLM experts said in 2019 that some affected land will never recover from this unmitigated damage.

There are 95,000 wild horses and burros roaming nearly 32 million acres in the West—triple what scientists and land management experts say the range can support. These animals face starvation and death from lack of forage and water. The population has more than doubled in just the past 10 years and continues to grow at a rate of 10 to 15 percent annually. This number includes the more than 47,000 animals the BLM has already gathered from public lands, at a cost to the American taxpayer of nearly $50 million annually to care for them in off-range corrals.

This is not a new issue—it is not just a western issue—it is an American issue. What is happening to these once-proud beasts of burden is neither compassionate nor humane, and what these animals are doing to federal lands and fragile ecosystems is unacceptable. In 2019, the American Association of Equine Practitioners and the American Veterinary Medication Association—two of the largest organizations of professional veterinarians in the world—issued a joint policy calling for further reducing overpopulation to protect the health and well-being of wild horses and burros on public lands. The National Wild Horse and Burro Advisory Board, a panel of nine experts and professionals convened to advise the BLM, endorsed the joint policy. Furthermore, animal welfare organizations such as the American Society for the Prevention of Cruelty to Animals and the Humane Society of the United States recognize that the prosperity of wild horses and burros on public lands is threatened if herds continue to grow unabated.

The BLM's multi-pronged approach in its 2020 Report to Congress[46] included expanded adoptions and sales of horses gathered from overpopulated herds; increased gathers and increased capacity for off-range holding facilities and pastures; more effective use of fertility control efforts; and improved research, in concert with the academic and veterinary communities, to identify more effective

contraceptive techniques and strategies. All of that will not be enough to solve the problem, however. Congress must enact laws permitting the BLM to dispose humanely of these animals.

IMMEDIATE ACTIONS REGARDING ALASKA

Alaska is a special case and deserves immediate action.[47] When Alaska was admitted to the Union in 1959, nearly its entire landmass was federally owned; therefore, Alaska was granted the right to select 104 million acres (out of 375 million acres) to manage for the benefit of its residents.[48] In less than eight years, Alaska selected 26 million acres. Then-Interior Secretary Stewart Udall—who served during the Kennedy and Johnson Administrations—put a freeze on further land selections to protect any claims that might be asserted by Native Alaskans.[49]

Alaska Native Claims Settlement Act. The discovery of oil at Prudhoe Bay in 1968 made resolution of the issue by Congress a matter of urgency. As a result, in 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA), which allowed the Native community to select 44 million acres.[50]

Environmentalists, upset that too much of the land they coveted would be selected by the state and Native Alaskans for development, demanded the inclusion in the act of a provision—Section 17(d)(2)—that ordered the Interior Secretary to withdraw 80 million acres for future designation by Congress as parks, refuges, wild and scenic rivers, and national forests.[51] The deadline for this congressional action was 1978, and as it neared, the Carter Administration, impatient and worried, decided to force Congress's hand. The Administration unilaterally withdrew 100 million acres from any use by the state or Native Alaskans.[52] Alaska promptly sued, charging that the Administration had failed to comply with the National Environmental Policy Act.[53]

In a lame duck session at the end of 1980, Congress passed (over the objections of the Alaskan delegation) the Alaska National Interest Lands Conservation Act, which revoked all of the withdrawals of the Carter Administration and substituted congressional designations that put 100 million acres permanently in federal enclaves, doubled the acreage of national parks and refuges, and tripled the amount of land declared to be wilderness.[54] Through all of this, Alaska pressed for the DOI to convey the lands to which Alaska was entitled by federal law, but the department grudgingly transferred only portions of that land.

By the time Ronald Reagan took office, Alaska had received less than half the lands to which it was entitled after its admission into the Union, and Native Alaskans had received only one-third of the land due to them.[55] From January of 1981 through 1983, however, under Reagan, Alaska received 30 million acres and a commitment of land transfers at the rate of 13 million acres annually. In the same period, Native Alaskans received 11 million acres, which constituted nearly 60 percent of their entitlement, and an additional 15 million acres were transferred by the end of 1988.[56]

Despite the passage of nearly 40 years since the end of the Reagan Administration, the federal government has yet to fulfill its statutory obligation to Alaska and Alaska Natives—specifically, each group has 5 million acres of entitlement remaining. Standing in the way are Public Land Orders (PLOs) issued by the BLM seizing that land for the agency. Those PLOs must be lifted to permit Alaska and Alaska Natives to select what was promised by Congress.

For example, revocation of PLO 5150[57] will provide the state of Alaska 1.3 million acres of its remaining state entitlement. This revocation should be a top priority. BLM recommended this revocation in the 2006 report to Congress based on the Alaska Land Transfer Acceleration Act, and the Interior Secretary has authority to revoke based on the Alaska Native Claims Settlement Act under section d(1).[58] All other remaining BLM PLOs—all of which are more than 50 years old—should be revoked immediately.

Alaska has untapped potential for increased oil production, which is important not just to the revitalization of the nation's energy sector but is vital to the Alaskan economy. One-quarter of Alaska's jobs are in the oil industry, and half of its overall economy depends on that industry. Without oil production, the Alaskan economy would be half its size.

A new Administration must take the following actions immediately:

- **Approve** the 2020 National Petroleum Reserve Alaska Integrated Activity Plan (NPRA-IAP) by resigning the Record of Decision. (Secretary Haaland's order reverted to the 2013 IAP, the science for which is out of date, unlike the 2020 IAP.)

- **Reinstate** the 2020 Arctic National Wildlife Refuge Environmental Impact Statement (EIS) by secretarial order and lift the suspension of the leases.

- **Approve** the 2020 Willow EIS, the largest pending oil and gas projection in the United States in the National Petroleum Reserve-Alaska, and expand approval from three to five drilling pads.[59]

Minerals. Alaska is not just blessed with an abundance of oil, it has vast untapped mineral potential. Therefore, the new Administration must immediately approve the Ambler Road Project[60] across BLM-managed lands, pursuant to the Secretary's authority under the ANILCA and based on the Final Environmental Impact Statement on the project.[61] This will permit construction of a new 211-mile roadway on the south side of the Brooks Range, west from the Dalton Highway to the south bank of the Ambler River, and open the area only to mining-related industrial uses, providing high-paying jobs in an area known for unemployment.

Wildlife and Waters. Throughout Alaska's history, the federal government has treated Alaska as less than a sovereign state. This is especially the case when it comes to two of Alaska's most valued resources, its wildlife and its waters. Immediate action is required to end, at least in part, this injustice. A new Administration should:

- **Revoke** National Park Service and U.S. Fish and Wildlife Service rules regarding predator control and bear baiting, which are matters for state regulation. Such revocation is permitted under the 2017 Congressional Review Act.[62]

- **Recognize** Alaska's authority to manage fish and game on all federal lands in accordance with ANILCA as during the Reagan Administration, when each DOI agency in Alaska signed a Memorandum of Understanding with the Alaska Department of Fish and Game ceding to the state the lead on fish and wildlife management matters.[63]

- **Issue** a secretarial order declaring navigable waters in Alaska to be owned by the state so that the lands beneath these waters belong to Alaska. This will force the BLM to prove that water is not navigable, since in the case of non-navigability, any submerged lands belong to the BLM. Currently, BLM requires Alaska to prove navigability at its own expense—including the BLM's preposterous assertion that the mighty Yukon River is non-navigable.

- **Reinstate** President Trump's 2020 Alaska Roadless Rule[64] for the Tongass National Forest in Alaska, which was replaced by a Biden Roadless Rule that continues a 2001 Clinton rule affecting 9.37 million of the forest's 16.7 million acres.[65] The Clinton rule affects an area where communities are in small islands with no road access. It has prevented multiple infrastructure projects, including roads, electric transmission lines, and water and sewer projects, and it forces residents to use a heavily subsidized ferry system. Logging has been shut down to the extent that New York harvests more timber than does all of Alaska.

OTHER ACTIONS

The 30 by 30 Plan.[66] President Biden's Executive Order 14008 (30 by 30 plan)[67] requires that the federal government, which already owns one-third of the country: (1) remove vast amounts of private property from productive use; and (2) end congressionally mandated uses of all federal land. The end result will be "total federal control of an additional 440 million acres of land or oceans in the U.S. by 2030."[68]

Although the new President should vacate that order, DOI under a conservative President must take immediate action on the 30 by 30 plan by vacating a secretarial order issued by the Biden DOI[69] that eliminated the Trump Administration's requirement for the approval of state and local governments before federal acquisition of private property with monies from the Land and Water Conservation Fund.[70]

National Monument Designations. As has every Democratic President before him beginning with Jimmy Carter, Joe Biden has abused his authority under the Antiquities Act of 1906. Like the outrageous, unilateral withdrawals from public use of multiple use federal land under the Carter, Clinton, and Obama Administrations, Biden's first national monument was one in Colorado—adopted over the objections of scores of local groups and at least one American Indian tribe.[71] In the days before the 2024 election, Biden will likely designate more western monuments.

Although President Trump courageously ordered a review of national monument designations, the result of that review was insufficient in that only two national monuments in one state (Utah) were adjusted.[72] Monuments in Maine and Oregon, for example, should have been adjusted downward given the finding of Secretary Ryan Zinke's review that they were improperly designated. The new Administration's review will permit a fresh look at past monument decrees and new ones by President Biden.

Furthermore, the new Administration must vigorously defend the downward adjustments it makes to permit a ruling on a President's authority to reduce the size of national monuments by the U.S. Supreme Court.

Finally, the new Administration must seek repeal of the Antiquities Act of 1906, which permitted emergency action by a President long before the statutory authority existed for the protection of special federal lands, such as those with wild and scenic rivers, endangered specials, or other unique places. Moreover, in recent years, Congress has designated as national monuments those areas deserving of such congressional action.

Oregon and California Lands Act. One national monument worthy of downward adjustment is in Oregon, where its designation and subsequent expansion interfere with the federal obligation to residents to harvest timber on its BLM lands. A federal district court ruled in 2019 that land subject to the Oregon and California (O&C) Grant Lands Act of 1937[73] was set aside by Congress to be harvested for the benefit of the people of Oregon. Specifically, those federal lands are to be "managed...for permanent forest production" and its timber "sold, cut, and removed in conformity with the princip[le] of sustained yield."[74]

As the district court concluded,[75] beginning in 1990, the federal government erected a trifecta of illegal barriers to the accomplishment of the congressional mandate, beginning with a response to the listing of the northern spotted owl,[76] continuing a decade later with the designation of the Cascade–Siskiyou National Monument,[77] and concluding in 2017 with an expansion of that monument.[78] In

order to fulfill the yet-unaltered congressional mandate contained in federal law, to provide for jobs and well-paying employment opportunities in rural Oregon, and to ameliorate the effects of wildfires, the new Administration must immediately fulfill its responsibilities and manage the O&C lands for "permanent forest production" to ensure that the timber is "sold, cut, and removed."[79]

NEPA Reforms. Congress never intended for the National Environmental Policy Act to grow into the tree-killing, project-dooming, decade-spanning monstrosity that it has become. Instead, in 1970, Congress intended a short, succinct, timely presentation of information regarding major federal action that significantly affects the quality of the human environment so that decisionmakers can make informed decisions to benefit the American people.

The Trump Administration adopted common-sense NEPA reform that must be restored immediately. Meanwhile, DOI should reinstate the secretarial orders adopted by the Trump Administration, such as placing time and page limits on NEPA documents and setting forth—on page one—the costs of the document itself. Meanwhile, the new Administration should call upon Congress to reform NEPA to meet its original goal. Consideration should be given, for example, to eliminating judicial review of the adequacy of NEPA documents or the rectitude of NEPA decisions. This would allow Congress to engage in effective oversight of federal agencies when prudent.

Settlement Transparency. Interior Secretary David Bernhardt required DOI to prominently display and provide open access to any and all litigation settlements into which DOI or its agencies entered, and any attorneys' fees paid for ending the litigation.[80] Biden's DOI, aware that the settlements into which it planned to enter and the attorneys' fees it was likely to pay would cause controversy, ended this policy.[81] A new Administration should reinstate it.

The Endangered Species Act. The Endangered Species Act was intended to bring endangered and threatened species back from the brink of extinction and, when appropriate, to restore real habitat critical to the survival of the species. The act's success rate, however, is dismal. Its greatest deficiency, according to one renowned expert, is "conflict of interest."[82] Specifically, the work of the Fish and Wildlife Service is the product of "species cartels" afflicted with groupthink, confirmation bias, and a common desire to preserve the prestige, power, and appropriations of the agency that pays or employs them. For example, in one highly influential sage-grouse monograph, 41 percent of the authors were federal workers. The editor, a federal bureaucrat, had authored one-third of the paper.[83]

Meaningful reform of the Endangered Species Act requires that Congress take action to restore its original purpose and end its use to seize private property, prevent economic development, and interfere with the rights of states over their wildlife populations. In the meantime, a new Administration should take the following immediate action:

- **Delist** the grizzly bear in the Greater Yellowstone and Northern Continental Divide Ecosystems and defend to the Supreme Court of the United States the agency's fact-based decision to do so.[84]

- **Delist** the gray wolf in the lower 48 states in light of its full recovery under the ESA.[85]

- **Cede** to western states jurisdiction over the greater sage-grouse, recognizing the on-the-ground expertise of states and preventing use of the sage-grouse to interfere with public access to public land and economic activity.

- **Direct** the Fish and Wildlife Service to end its abuse of Section 10(j) of the ESA by re-introducing so-called "experiment species" populations into areas that no longer qualify as habitat and lie outside the historic ranges of those species, which brings with it the full weight of the ESA in areas previously without federal government oversight.[86]

- **Direct** the Fish and Wildlife Service to design and implement an impartial conservation triage program by prioritizing the allocation of limited resources to maximize conservation returns, relative to the conservation goals, under a constrained budget.[87]

- **Direct** the Fish and Wildlife Service to make all data used in ESA decisions available to the public, with limited or no exceptions, to fulfill the public's right to know and to prevent the agency's previous opaque decision-making.

- **Abolish** the Biological Resources Division of the U.S. Geological Survey and obtain necessary scientific research about species of concern from universities via competitive requests for proposals.

- **Direct** the Fish and Wildlife Service to: (1) design and implement an Endangered Species Act program that ensures independent decision-making by ending reliance on so-called species specialists who have obvious self-interest, ideological bias, and land-use agendas; and (2) ensure conformity with the Information Quality Act.[88]

Office of Surface Mining. The Office of Surface Mining Reclamation and Enforcement (OSM) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA)[89] to administer programs for controlling the impacts of surface coal mining operations. Although the coal industry is contracting, coal constitutes

20 percent of the nation's electricity and is a mainstay of many regional economies. The following actions should ensure OSM's ability to perform its mission while complying with SMCRA and without interfering with the production of high-quality American coal:

- **Relocate** the OSM Reclamation and Enforcement headquarters to Pittsburgh, Pennsylvania, to recognize that the agency is field-driven and should be headquartered in the coal field.[90]

- **Reduce** the number of field coal-reclamation inspectors to recognize the industry is smaller.

- **Reissue** Trump's Schedule F executive order to permit discharge of nonperforming employees.[91]

- **Permit** coal company employees to benefit from the OSM Training Program, which is currently restricted to state and federal employees.

- **Revise** the Applicant Violator System, the nationwide database for the federal and state programs, to permit federal and state regulators to consider extenuating circumstances.

- **Maintain** the current "Ten-Day Notice" rule, which requires OSM to work with state regulators in determining if a SMCRA violation has taken place in recognition of the fact that a coal mining state with primacy has the lead in implementing state and federal law.

- **Preserve** Directive INE-26, which relates to approximate original contour, a critical factor in permitting efficient and environmentally sound surface mining, especially in Appalachia.[92]

Western Water Issues. The American West, from the Great Plains to the Cascades Range, is arid, as recognized by John Wesley Powell during his famous trip across a large part of its length. Pursuant to an Executive Order signed by President Trump, and consistent with its authority along with other federal agencies, DOI's Bureau of Reclamation must take the following actions:

- **Develop** additional storage capacity across the arid west, including by:

    1. Updating dam water control manuals for existing facilities during routine operations; and

2. Engaging in real-time monitoring of operations.

- **Reduce** bureaucratic inefficiencies by consolidating federal water working groups.
- **Implement** actions identified in the Federal Action Plan for Improving Forecasts of Water Availability,[93] especially by adopting improvements related to:

1. Forecast Informed Reservoir Operations; and
2. Arial Snow Observation Systems.

- **Clarify** the Water Infrastructure Finance and Innovation Act[94] to ensure consistent application with other federal infrastructure loan programs under the Federal Credit Reform Act. This should be done to foster opportunities for locally led investment in water infrastructure.
- **Reinstate** Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West.[95]

AMERICAN INDIANS AND U.S. TRUST RESPONSIBILITY

The Biden Administration has breached its federal trust responsibilities to American Indians. This is unconscionable. Specifically, the Biden Administration's war on domestically available fossil fuels and mineral sources has been devastating. To wit:

- The ability of American Indians and tribal governments to develop their abundant oil and gas resources has been severely hampered, depriving them of the revenue and profits to which they are entitled during a time of increasing worldwide energy prices, forcing American Indians—who are among the poorest Americans—to choose between food and fuel.
- Indian nations with significant coal resources have some of the highest quality and cleanest-burning coal in the world, but the Biden Administration has sought to destroy the market for their coal by eliminating coal-fired electricity in the country and to prevent the transport of their coal for sale internationally. Meanwhile, the Biden Administration, at great public expense, artificially boosted the demand for electric vehicles, which, because of their remote locations, the absence of increased electricity demands for charging electric vehicles nearby, and the distances to be traveled, are not a choice for Indian communities.

- A significant percentage of critical minerals needed by the United States is on Indian lands, but the Biden Administration has actively discouraged development of critical mineral mining projects on Indian lands rather than assisting in their advancement.

- Despite Indian nations having primary responsibility for their lands and environment and responsibility for the safety of their communities, the Biden Administration is reversing efforts to put Indian nations in charge of environmental regulation on their own lands.

Moreover, Biden Administration policies, including those of the DOI, have disproportionately impacted American Indians and Indian nations.

- By its failure to secure the border, the Biden Administration has robbed Indian nations on or near the Mexican border of safe and secure communities while permitting them to be swamped by a tide of illegal drugs, particularly fentanyl.

- When ending COVID protocols at Bureau of Indian Education (BIE) schools, Biden's DOI failed to ensure an accurate accounting of students returning from school shutdowns, which presents a significant danger to the families that trust their children to that federal agency.

- The BIE is not reporting student academic assessment data to ensure parents and the larger tribal communities know their children are learning and are receiving a quality education.

The new Administration must take the following actions to fulfill the nation's trust responsibilities to American Indians and Indian nations:

- **End** the war on fossil fuels and domestically available minerals and facilitate their development on lands owned by Indians and Indian nations.

- **End** federal mandates and subsidies of electric vehicles.

- **Restore** the right of tribal governments to enforce environmental regulation on their lands.

- **Secure** the nation's border to protect the sovereignty and safety of tribal lands.

- **Overhaul** BIE schools to put parents and their children first.

Finally, the new Administration should seek congressional reauthorization of the Land Buy-Back Program for Tribal Nations,[96] which provided a $1.9 billion Trust Land Consolidation Fund to purchase fractional interests in trust or restricted land from willing sellers at fair market value, but which sunsets November 24, 2022. New funds should come from the Great American Outdoors Act.[97]

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17

DEPARTMENT OF JUSTICE

Gene Hamilton

The Department of Justice (DOJ) has a long and noble history. That history began with the creation of the Office of the Attorney General pursuant to the Judiciary Act of 1789[1] and has continued through the creation of the department in 1870,[2] the formation of the Federal Bureau of Investigation (FBI) in 1908,[3] reforms following the terrorist attacks of September 11, 2001, and to the present day. Properly understood within the framework of a constitutional republic that values ordered liberty, the Department of Justice has two primary functions: protecting public safety and defending the rule of law.

Unfortunately, the department has lost its way in recent years and has forfeited the trust of large segments of the American people. Large swaths of the department have been captured by an unaccountable bureaucratic managerial class and radical Left ideologues who have embedded themselves throughout its offices and components. The department also suffers from institutional inattentiveness to its core functions. Instead of being perceived as possessing the utmost impartiality and fairness as it advances the national interest on behalf of the American people—fighting crime and defending the rule of law—the DOJ has become a department that 46.6 percent of Americans recently indicated is, in their view, "too political, corrupt, and not to be trusted."[4]

The weight of the publicly available evidence indicates that there are many reasons for this lack of trust. For example:

- The Federal Bureau of Investigation, knowing that claims of collusion with Russia were false,[5] collaborated with Democratic operatives to inject

the story into the 2016 election through strategic media leaks, falsified Foreign Intelligence Surveillance Act (FISA) warrant applications, and lied to Congress.[6]

- Personnel within the FBI engaged in a campaign to convince social media companies and the media generally that the story about the contents of Hunter Biden's laptop was the result of a Russian misinformation campaign—while the FBI had possession of the laptop the entire time and could have clarified the authenticity of the source.[7]

- The DOJ engaged in conduct to chill the free speech rights of parents across the United States in response to supposed "threats" against school boards,[8] yet it failed to engage in any concerted campaign to protect the rights of Americans who actually *were* terrorized by acts of violence like those perpetrated against pregnancy care centers.[9]

- The FBI tasked agents with monitoring social media and flagging content they deemed to be "misinformation" or "disinformation" (not associated with any plausible criminal conspiracy to deprive anyone of any rights) for platforms to remove.[10]

- The FBI engaged in a domestic influence operation to pressure social media companies to report more "foreign influence" than the FBI was actually seeing and stop the dissemination of and censor true information directly related to the 2020 presidential election.[11]

- The department has devoted unprecedented resources to prosecuting American citizens for misdemeanor trespassing offenses or violations of the FACE Act[12] while dismissing prosecutions against radical agents of the Left like Antifa.[13]

- The department has consistently threatened that any conduct not aligning with the liberal agenda "could" violate federal law—without actually taking a position that the conduct in question is illegal—using the prospect of protracted litigation and federal sanctions to chill disfavored behavior such as with state efforts to restrict abortion[14] or prevent genital mutilation of children.[15]

- The department has sued multiple states regarding their efforts to enhance election integrity.[16]

- The department has failed to do its part to stop the flood of fentanyl and other deadly drugs that are flowing across our borders and decimating families and communities across the United States.[17]

- The department has abdicated its responsibility to assist in the enforcement of our immigration laws and has engaged in wholescale abandonment of its duty to adjudicate cases in the immigration court system.

These actions stand in stark contrast to Attorney General Merrick Garland's assertion before taking office that "there [must] not be one rule for Democrats and another for Republicans, one rule for friends and another for foes."[18]

While it is true, as it is with other federal departments and agencies, that there are committed career personnel across the department who perform their duties faithfully and with the best intentions, this small sampling of scandals illustrates that the DOJ has become a bloated bureaucracy with a critical core of personnel who are infatuated with the perpetuation of a radical liberal agenda and the defeat of perceived political enemies. It has become a Cabinet-level department whose leadership appears to care more about how they are perceived in the next *Politico* or *Washington Post* article, or their stature with any number of radical leftist organizations, than they do about justice and advancing the interests of the American people.

It is essential that the next conservative Administration place a high priority on reforming the DOJ and its culture to align the department with its core purposes and advance the national interest. Critically, this must include the FBI. Anything other than a top-to-bottom overhaul will only further erode the trust of significant portions of the American people and harm the very fabric that holds together our constitutional republic. At a practical level, not reforming the Department of Justice will also guarantee the failure of that conservative Administration's agenda in countless other ways.

Successful reform will require more than minor peripheral adjustments. It will require a holistic, energetic, leadership-driven effort to remedy the damage that has been done and advance the national interest. Additionally, some needed reforms will not be possible without legislative changes from Congress. While it is true that certain offices and components—like the FBI or the Civil Rights Division—will require more attention than others, committed direction from the department's political leadership can restore the department's focus on its two core functions: protecting public safety and defending the rule of law.

This chapter features prominently the things the department must do to restore its focus on these functions. Of course, there are other important reforms that do not necessarily fit within either of those core functions, so this chapter includes an additional section to address those areas.

PRIORITIZING THE PROTECTION OF PUBLIC SAFETY

Ordered liberty is at risk when our citizens lack physical safety, when career criminals do not fear the law, when foreign cartels move narcotics and illegal aliens into our nation at will, and when political leaders call citizens "domestic terrorists" for exercising their constitutional rights. The Department of Justice—in partnership with state and local partners—must recommit in both word and deed to protecting public safety.

The overwhelming majority of crimes in the United States are properly handled at the state and local levels,[19] but the DOJ can provide critical technical support for local law enforcement and play a critical agenda-setting role. With respect to the Department's core responsibilities—enforcing our immigration laws, combating domestic and international criminal enterprises, protecting federal civil rights, and combating foreign espionage—the federal government has primary authority and, accordingly, accountability.

The evidence shows that the Biden Administration's Department of Justice has failed to protect law-abiding citizens and has ignored its most basic obligations. It has become at once utterly unserious and dangerously politicized. Prosecution and charging decisions are infused with racial and partisan political double standards.[20] Immigration laws are ignored.[21] The FBI harasses protesting parents (branded "domestic terrorists" by some partisans) while working diligently to shut down politically disfavored speech on the pretext of its being "misinformation" or "disinformation."[22] A department that prosecutes FACE Act cases while ignoring dozens of violent attacks on pregnancy care centers and/or the coordinated violation of laws that prohibit attempts to intimidate Supreme Court Justices by parading outside of their homes[23] has clearly lost its way. A department that has twice engaged in covert domestic election interference and propaganda operations—the Russian collusion hoax in 2016 and the Hunter Biden laptop suppression in 2020—is a threat to the Republic.[24]

- Restoring the department's focus on public safety and a culture of respect for the rule of law is a gargantuan task that will involve at minimum four overriding actions:
- Restoring the FBI's integrity.
- Renewing the DOJ's focus on violent crime.
- Dismantling domestic and international criminal enterprises.
- Pursuing a national security agenda aimed at external state and non-state actors, not U.S. citizens exercising their constitutional rights.

RESTORING THE FBI'S INTEGRITY

The FBI was founded in 1908 to "tackle national crime and security issues" when "there was hardly any systematic way of enforcing the law across this now broad landscape of America."[25] It best serves the American people when it dedicates its resources and energies to attacking violent crime,[26] criminal organizations,[27] child predators,[28] cyber-crime, and other uniquely federal interests.[29]

Revelations regarding the FBI's role in the Russia hoax of 2016, Big Tech collusion, and suppression of Hunter Biden's laptop in 2020 strongly suggest that the FBI is completely out of control. To protect the Constitution, fight crime effectively, and protect the nation from foreign adversaries, the next conservative Administration should begin to restore the FBI's domestic reputation and integrity and enhance its effectiveness in meeting actual foreign threats. To do so, the next conservative Administration should:

- **Conduct an immediate, comprehensive review of all major active FBI investigations and activities and terminate any that are unlawful or contrary to the national interest.**[30] This is an enormous task, but it is necessary to re-earn the American people's trust in the FBI and its work. To conduct this review, the department should detail attorney appointees with criminal, national security, or homeland security backgrounds to catalogue any questionable activities and elevate them to appropriate DOJ leadership consistent with the new chain of command (discussed below). The department should also consider issuing a public report of the findings from this review as appropriate.

- **Align the FBI's placement within the department and the federal government with its law enforcement and national security purposes.** DOJ veterans often opine that the FBI views itself as an independent agency—accountable to no one and on par with the Attorney General in terms of stature—but the fact remains that "[t]he Federal Bureau of Investigation is located *in* the Department of Justice."[31] It is not independent from the department (just as Immigration and Customs Enforcement is not independent from the Department of Homeland Security) and does not deserve to be treated as if it were.

  The next conservative Administration should direct the Attorney General to remove the FBI from the Deputy Attorney General's direct supervision within the department's organizational chart and instead place it under the general supervision of the Assistant Attorney General for the Criminal Division and the supervision of the Assistant Attorney General for the National Security Division, as applicable.[32] This can be accomplished

through a simple internal departmental reorganization and does not need to be approved by Congress.

Such a structure would allow the FBI to play an important role in advising the department's leadership on emerging threats and updating notable investigations through daily briefings conducted with the Criminal Division and National Security Division leadership, but it would also place the FBI under a politically accountable leader with fewer things to manage than the Deputy Attorney General or the Attorney General have. All notifications and approvals that currently run to the Deputy Attorney General or the Attorney General should be evaluated and redirected in the first instance, where appropriate, to the relevant Assistant Attorney General.

Such a move would better align the FBI with the mission of the divisions with which it most often interacts and emphasize the need for the areas on which it should focus. In general, however, under no circumstances should the FBI ever be able to go around the Attorney General or the department's leadership on any matter within its area of responsibility.

- **Prohibit the FBI from engaging, in general, in activities related to combating the spread of so-called misinformation and disinformation by Americans who are not tied to any plausible criminal activity.** The FBI, along with the rest of the government, needs a hard reset on the appropriate scope of its legitimate activities. It must not look to or rely on the past decade as precedent or legitimization for continued action in certain spaces. This is especially true with respect to activities that the FBI and the U.S. government writ large claim are efforts to combat "misinformation," "disinformation," or "malinformation."

  The United States government and, by extension, the FBI have absolutely no business policing speech, whether in the public square, in print, or online. The First Amendment prohibits it. The United States is the world's last best hope for self-government,[33] and its survival relies on the ability of our people to have healthy debate free from government intervention and censorship. The government, through its officials, is certainly able to speak and provide information to the public. That is a healthy component of an informed society. But government must *never* manipulate the scales and censor information that is potentially harmful to it or its political leadership. This is the way of totalitarian dictatorships, not of free constitutional republics.

The DOJ needs a hard firewall between its legitimate activities (monitoring online activity for potential threats in its mission space, looking at social media profiles for evidence of intent or other criminal activity, etc.) and those in which it must not engage (asking or demanding public forums or publishers to remove material based on the content and/or viewpoints expressed or itself censoring speech).

- **Streamline the non–law enforcement functions within the FBI, such as its Office of General Counsel, and obtain those services from other offices within the department.** The next conservative Administration should eliminate any offices within the FBI that it has the power to eliminate without any action from Congress.[34] For example, few Americans know that the FBI maintains a core of approximately 300 attorneys within its Office of General Counsel, an office that has been involved in some of the FBI's most damaging recent scandals.[35] These attorneys are not necessary to the functioning of the FBI in their current capacity. Legal advice should come from attorneys at the DOJ, whether those attorneys are within the Criminal Division, the National Security Division, the Justice Management Division, or the Office of Legal Counsel. Moving legal review outside the FBI would serve as a crucial check on an agency that has recently pushed past legal boundary after legal boundary. Similarly, the FBI does not need its own Office of Congressional Affairs separate and apart from the DOJ Office of Legislative Affairs, nor does it need its own Office of Public Affairs.

- **Emphasize, fund, and reward field offices while shrinking headquarters staff.** While the FBI has essential headquarters functions that must be fulfilled and should likely be fulfilled by a team in Washington, D.C., the next conservative Administration should make a priority of deploying, funding, and rewarding the work of the field offices to the greatest extent possible. The Department of Justice must value badges over bureaucracy, must rethink its internal reporting structures, and should aim to realign the FBI's resources accordingly.

- **Submit a legislative proposal to Congress to eliminate the 10-year term for the Director.** After J. Edgar Hoover's decades-long term as FBI Director came to an end following his death in 1972, and in light of oversight conducted by Congress into alleged Intelligence Community and FBI abuses in the 1970s, Congress limited the Director's tenure to one "ten-year term."[36] The realities of the FBI's abuses and overreach in recent years demonstrate that further reform is still necessary.

The Director of the FBI must remain politically accountable to the President in the same manner as the head of any other federal department or agency. To ensure prompt political accountability and to rein in perceived or actual abuses, the next conservative Administration should seek a legislative change to align the FBI Director's position with those of the heads of all other major departments and agencies.

RENEWING THE DEPARTMENT'S FOCUS ON VIOLENT CRIME

Despite the DOJ's pronouncements that violent crime continues to be a top priority, it has increased across the United States. The department's leadership must make actually reducing violent crime a priority across the United States—and it must do so in partnership with state and local officials in a manner that is tailored to the needs and conditions in those states and localities.

Targeting Violent and Career Criminals, Not Parents. The next conservative Administration must ensure that the Department of Justice devotes significant effort to reducing violent crime nationwide. The Attorney General should require all U.S. Attorneys to develop a jurisdictional-specific plan—whenever possible in coordination with state and local law enforcement—to reduce violent crime within each of their districts. Then the Attorney General should hold each U.S. Attorney accountable for achieving actual results.

In recent years, federal and state officials have succumbed to calls from anti–law enforcement advocates for so-called criminal justice reform. The pleasant-sounding terminology of reform masks the darker reality of this movement, which is one that has supported dismantling effective federal, state, and local law enforcement and stripped away some of the most fundamental tools that law enforcement has long had at its disposal. This campaign is not just ill-advised; it has clearly had real-world consequences in the form of catastrophic increases in crime—particularly violent crime—nationwide. As discussed in the next section, the Department of Justice has a special obligation to restore law and order in such districts.[37]

Juxtaposed against this increase in violent crime are things like Attorney General Merrick Garland's October 4, 2021, memorandum directing the commitment of significant resources and energies to combating imaginary, politically convenient threats of violence toward members of school boards and their staffs during the heat of the Virginia gubernatorial race.[38] There was no similar effort to investigate elected officials and other public officers who conspired with outside allies to target and harass parents who were merely exercising their constitutional and statutory rights.[39] If we are to continue to have informed and civil dialogue in the United States on issues of public concern, the DOJ must enforce applicable civil rights laws in an even-handed way when citizens' livelihoods are threatened merely because they have exercised their rights.

Enhancing the Federal Focus on and Resources in Jurisdictions with Rule-of-Law Deficiencies. A disturbing number of state and local jurisdictions have enacted policies that directly undermine public safety, leave doubt about whether criminals will be punished, and weaken the rule of law. While the prosecution of criminal offenses in most jurisdictions across the country must remain the responsibility of state and local governments, the federal government owes a special responsibility to Americans in jurisdictions where state and local prosecutors have abdicated this duty.[40]

Jurisdictions suffering from deficiencies in the rule of law warrant, as appropriate within our federal system, greater attention and additional federal resources that are sufficient to protect the rights of American citizens and federal interests. In the next conservative Administration, the DOJ, acting primarily through its U.S. Attorneys, should therefore:

- **Use applicable federal laws to bring federal charges against criminals when local jurisdictions wrongfully allow them to evade responsibility for their conduct.**[41] The department should also increase the federal law enforcement presence in such jurisdictions and explore innovative solutions to bring meaningful charges against criminals and criminal organizations in such jurisdictions.

- **Where warranted and proper under federal law, initiate legal action against local officials—including District Attorneys—who deny American citizens the "equal protection of the laws" by refusing to prosecute criminal offenses in their jurisdictions.** This holds true particularly for jurisdictions that refuse to enforce the law against criminals based on the Left's favored defining characteristics of the would-be offender (race, so-called gender identity, sexual orientation, etc.) or other political considerations (e.g., immigration status).

- **Pursue policies and legislation that encourage prosecution of violent crimes as well as appropriate sentences for such offenses.** The Biden Administration has adopted policies that do not prevent armed career criminals, who actually commit violent crimes, from committing those crimes. A recent U.S. Sentencing Commission report shows that armed career criminals are consistently sentenced below their minimum sentencing guidelines range.[42]

  There are valid reasons for sentence reductions in particular cases (for example, if the defendant has provided substantial assistance in prosecuting other offenders). At the same time, the DOJ must ensure that its line

attorneys are consistently using the tools at their disposal in cases with violent offenders, including pursuing mandatory minimum sentences under the Armed Career Criminal Act (ACCA).[43] The department should also support legislative efforts to provide further tools, such as the Restoring the Armed Career Criminal Act, which Senators Tom Cotton (R–AR), Marsha Blackburn (R–TN), and Cindy Hyde-Smith (R–MS) introduced in 2021 in response to U.S. Supreme Court decisions neutering the ACCA.[44]

- **Enforce the death penalty where appropriate and applicable.** Capital punishment is a sensitive matter, as it should be, but the current crime wave makes deterrence vital at the federal, state, and local levels. However, providing this punishment without ever enforcing it provides justice neither for the victims' families nor for the defendant. The next conservative Administration should therefore do everything possible to obtain finality for the 44 prisoners currently on federal death row. It should also pursue the death penalty for applicable crimes—particularly heinous crimes involving violence and sexual abuse of children—until Congress says otherwise through legislation.[45]

DISMANTLING DOMESTIC AND INTERNATIONAL CRIMINAL ENTERPRISES

Criminal organizations are as old as crime itself, but are more extensive, sophisticated, and dangerous today than at any other point in history. The Department of Justice has a key role in tackling transnational criminal organizations like Mara Salvatrucha (MS-13) and Mexican drug cartels as well as purely domestic criminal organizations like those built on the more traditional mafia crime model as part of its obligation to ensure the safety and security of the American people.

The department's primary directive under the next Administration should be to return to an unapologetic focus on dismantling these criminal organizations and incarcerating their membership. Once this reprioritization occurs, the department's political leadership should take concrete steps to use agency reach and resources to prevent these criminal organizations from operating and surviving. Assaulting the business model of these criminal organizations—which are massive, diversified enterprises with nationwide or international operations—is essential for success. The next Administration will therefore need to:

- **Revitalize the DOJ's use of the array of statutory tools that exist for dealing with the threat of criminal organizations.** The most potent ones are the simplest. For example, the department should:

1. Rigorously prosecute as much interstate drug activity as possible, including simple possession of distributable quantities.[46] Recent efforts to create the impression that drug possession crimes are not serious offenses has contributed to the explosion of criminal organization activities in the United States.

2. Aggressively deploy the Racketeer Influenced and Corrupt Organizations Act (RICO),[47] which Congress expressly created to empower the Department of Justice to treat patterns of intrastate-level crimes, such as robbery, extortion, and murder, as federal criminal conduct for criminal organizations and networks. The next Administration can use existing tools while it works with Congress to develop new tools.

- **Secure the border,[48] which is the key entry point for many criminal organizations and their supplies, products, and employees.** Mexico—which is arguably functioning as a failed state run by drug cartels—is the main point of transit for illegal drugs produced in Central and South America, fentanyl precursors from the Chinese Communist Party–led People's Republic of China,[49] weapons, human smuggling and trafficking, and other contraband. Mexican drug cartels, including the dominant Sinaloa Cartel and the Jalisco New Generation Cartel (CJNG), are the main drivers of fentanyl production and distribution in the United States. The southwestern land border is sufficiently porous that Mexican drug cartels have operational control of large sections of the border, which facilitates easy movement of product and personnel. These cartels are also violent and not afraid to demonstrate force on both sides of the border. Their conduct represents a clear and present danger to the United States and its citizens.

  In addition to finalizing the southwestern land border wall, the next Administration should take a creative and aggressive approach to tackling these dangerous criminal organizations at the border. This could include use of active-duty military personnel and National Guardsmen to assist in arrest operations along the border—something that has not yet been done. A new and forceful approach to interdiction will have a ripple effect on the operations of these criminal organizations, which currently operate freely without concern for criminal prosecution, and will lay the necessary groundwork for initial prosecutions of these organizations and their leaders.

  It is critical that the federal government staunch the flow of drugs by preventing the far-too-easy access to the United States that now exists.

There can be no serious dispute that the Biden Administration has opened the southwest border to whomever wants to enter and that some of those entrants are smuggling fentanyl into the country. More than 100,000 Americans died in a one-year period from opioid overdoses, and many of them died specifically from having used fentanyl.[50] The federal government should treat this problem as aggressively as necessary. Enforcing the customs and immigration laws is a matter of life and death.

PURSUING A NATIONAL SECURITY AGENDA AIMED AT EXTERNAL STATE AND NON-STATE ACTORS, NOT U.S. CITIZENS EXERCISING THEIR CONSTITUTIONAL RIGHTS

The Department of Justice plays a vital role in protecting our national security, and it must not refrain from engaging in public initiatives that identify our adversaries and educate the American people about their activities.

The DOJ's China Initiative under President Trump reflected the department's priority of combating Chinese threats to our national security.[51] Because China was accountable for approximately 80 percent of all prosecutions for economic espionage and approximately 60 percent of all thefts of trade secrets, then-Attorney General Jeff Sessions set key goals for the China Initiative that included development of an enforcement strategy concerning researchers in labs and universities who were being coopted into stealing critical U.S. technologies, identification of opportunities to address supply-chain threats more effectively, and education of colleges and universities about potential threats from Chinese influence efforts on campus.

In February 2022, the Biden Administration terminated the department's China Initiative largely out of a concern for poor "optics."[52] While the Biden Administration correctly identified China as America's "only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to do it,"[53] it folded in the face of political correctness and sent the message that liberal sensitivities outweighed bringing justice to threats from China. The next conservative Administration should therefore:

- **Restart the China Initiative.**
- **Pursue other programs to educate the American people about the real and dangerous threats to our national security and economic security that are posed by actors across the globe, most notably China and Iran.**
- **Ensure that it is agile enough to devote sufficient resources and attention to other emerging threats that involve federal interests**

such as increases in "sextortion," ransomware, and the continued proliferation of child pornography.

DEFENDING THE RULE OF LAW

The DOJ's actions over the course of the Biden Administration exhibit scorn for its stated mission: "to uphold the rule of law, to keep our country safe, and to protect civil rights."[54] The Biden Administration's unprecedented politicization and weaponization of the department therefore demand a comprehensive response from the next Administration.

Restoration of the department's values of independence, impartiality, honesty, integrity, respect, and excellence must serve as first principles for its efforts on all fronts. Concretely, the DOJ must identify and address all individuals, policies, and directives that have fueled the destruction of these core values and the American people's loss of trust in the department and its officials. The next Administration will need to exert significant energy to dismantle the two-tiered system of justice currently in place at the department while simultaneously applying the rule of law evenly and with neutrality.

Specific examples of department corruption, such as the Russia collusion hoax, will need to be tackled, exposed, and addressed head-on. This will require not just winning in a court of law, but also demonstrating culpability to the public and the media in a concrete and nonrefutable manner. These efforts will require commitment and willpower, but they will be essential to restoring the trust of the American people.

Promptly and Properly Eliminating Lawless Policies, Investigations, and Cases, Including All Existing Consent Decrees. Few things undermine the DOJ's credibility more than brazenly partisan and ideologically driven prosecution of an Administration's perceived political enemies, yet the department has readily indulged in such misadventures during the Biden Administration. Before even entering the Robert F. Kennedy building on January 20, 2025, the next Administration should:

- **Conduct a thorough review of all publicly available policies, investigations, and cases.**
- **In a manner consistent with applicable law, prepare a plan to end immediately any policies, investigations, or cases that run contrary to law or Administration policies.**
- **Ensure that upon the next President's inauguration, appointees at the department obtain information about anything that was not learned before taking office and conduct the same analysis.**

An egregious example of the need for such a review is provided by the department's use of the Freedom of Access to Clinic Entrances (FACE) Act[55] to harass pro-life demonstrators while not pursuing similar investigations of shocking acts of violence committed against pro-life pregnancy resource centers. On the morning of September 23, 2022, pro-life activist Mark Houck was arrested by more than 15 FBI agents at his home in Pennsylvania in front of his wife and small children. Agents came to his door with guns drawn to arrest the 48-year-old father of seven whose alleged crime involved a minor altercation with an activist who was harassing one of his children in front of an abortion clinic almost one year before Mr. Houck's arrest by the FBI.[56] Similarly, Paul Vaughn, a 55-year-old father of 11, was arrested at his home in Mt. Juliet, Tennessee, by armed FBI agents for allegedly participating in a peaceful protest at an abortion clinic one year earlier.[57]

These arrests stand in stark contrast to the department's virtual silence on the wave of vandalism and violence directed at religiously affiliated institutions, including pregnancy resource centers, following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*.[58] The Catholic News Agency reported more than one hundred such incidents as of September 2022.[59]

By engaging in disparate and viewpoint-based enforcement of an already controversial law like the FACE Act against pro-life activists, the DOJ has needlessly undermined its credibility with law-abiding people of faith. The department should make every effort to uphold equal protection of the law and avoid politically motivated and viewpoint-based prosecutions. Specifically, it should:

- **Ensure that its review extends beyond ending the absurd double standards embodied in the ongoing campaign of FACE Act prosecutions and instead be a thorough and holistic review of all DOJ activities, including all consent degrees and settlement agreements currently in force.**

- **Seek to terminate any unnecessary or outdated consent decree to which the United States is a party.**

- **Consider pursuing intervention in other matters where consent decrees or settlement agreements continue to bind parties years or decades after the fact.**

- **As its review concludes, and consistent with applicable law, take appropriate action in all cases, including those on appeal.**

- **Enact policies and regulations that prohibit settlement payments to third parties.**

Engaging in Zealous Advocacy for and Defense of the Constitution and Lawful Administration Regulations and Policies. The Department of Justice has the exclusive responsibility for the "conduct of litigation in which the United States, an agency, or officer thereof"[60] is involved and has been charged with the supervision of "all litigation to which the United States, an agency, or officer thereof is a party."[61] However, in politically contentious cases, Assistant United States Attorneys and other line prosecutors during conservative Administrations seek to influence outcomes of cases not because of any legal deficiency in the case or policy being defended, but by refusing to take certain positions, by writing public letters of protest, and by engaging in faux resignations from certain internal appointments. This can cause the department to take positions that are inconsistent with the interests of the President and his appointees in other places throughout the Administration.

While the supervision of litigation is a DOJ responsibility, the department falls under the direct supervision and control of the President of the United States as a component of the executive branch. Thus, and putting aside criminal prosecutions that can warrant different treatment, litigation decisions must be made consistent with the President's agenda. This can force line attorneys to take uncomfortable positions in civil cases because those positions are more closely aligned with the President's policy agenda.

Ultimately, the department will have to make tough calls as it manages its litigation, but those calls must always be consistent with the President's policy agenda and the rule of law. A line attorney should never either directly or indirectly pursue a policy agenda through litigation that is inconsistent with the agenda of his or her client agency or the President. The department should also be cognizant of any attempts to slow litigation and outlast the Administration to avoid finality. The next conservative Administration should therefore:

- **Issue guidance to ensure that litigation decisions are consistent with the President's agenda and the rule of law.**

- **Ensure that, consistent with this principle, the department's leadership is prepared to impose appropriate disciplinary action as circumstances arise.**

Affirming the Separation of Powers. Federal courts have jurisdiction to deal with a wide array of issues in law and equity in the United States. The increasingly aggressive posture of federal courts does not change one constitutionally immutable fact: All three branches of the federal government retain not just the right, but the obligation to assess constitutionality. It is this obligation that is the foundation of the separation of powers.

The next conservative Administration should embrace the Constitution and understand the obligation of the executive branch to use its independent resources and authorities to restrain the excesses of both the legislative and judicial branches. This will mean ensuring that the leadership of the Department of Justice and its components understand the separation of powers, that pushback among the branches is a positive feature and not a defect of our system, and that the federal system is strengthened, not weakened, by disagreement among the branches.

One example includes potentially seeking the overruling of *Humphrey's Executor v. United States*.[62] This case approved so-called independent agencies whose directors are not removable by the President at will. The Supreme Court has chipped away at *Humphrey's Executor* in cases like *Seila Law v. Consumer Financial Protection Bureau*,[63] but the precedent remains. The next conservative Administration should formally take the position that *Humphrey's Executor* violates the Constitution's separation of powers.

Zealously Guarding Other Constitutional Protections. The next conservative Administration must ensure that the DOJ zealously guards the constitutional rights of all Americans in all that it does. This extends not only to rights implicated in the department's criminal activities, but to all rights enjoyed by the American people—such as the First Amendment. The department should reject any invitation to limit these fundamental promises based on the political ideology of the speech at issue.

A recent Supreme Court case illustrates the problems that arise when the DOJ takes a cramped interpretation of the First Amendment in service of a political ideology. In *303 Creative LLC v. Elenis*, the department argued in favor of the government's ability to coerce and compel what the lower courts all found to be pure speech.[64] The oral argument made clear the department's view that it was the viewpoint expressed that gave the government power to censor and compel speech. During oral argument, the United States took the remarkable position that government can compel a Christian website designer to imagine, create, and publish a custom website celebrating same-sex marriage but cannot compel an LGBT person to design a similar website celebrating opposite-sex marriage.[65] In the government's view, declining to create the latter website was based on an objection to the message, while the former was based on status rather than message, but this argument inevitably turns on the viewpoint expressed. It means that the government gets to decide which viewpoints are protected and which are not—a frightening and blatantly unconstitutional proposition.

Just as troubling, the government's arguments against free speech are not limited to the facts of *303 Creative*. As Colorado admitted to the lower courts, all sorts of artists and speakers like speechwriters, photographers, and videographers can be compelled to design custom messages that violate their most fundamental convictions as long as it serves a certain viewpoint that the government wants to promote.

In fact, it was only a few years ago, in *Masterpiece Cakeshop*, that the government acknowledged the constitutional problems involved in compelling artists to speak government-favored messages. In that case, the United States acknowledged "a basic First Amendment principle that 'freedom of speech prohibits the government from telling people what they must say.'"[66] The department had it right when it argued that the government may not "compel the dissemination of its own preferred message," because the First Amendment protects the "individual freedom of mind."[67] It was also correct when it argued that "[a]n artist cannot be forced to paint, a musician cannot be forced to play, and a poet cannot be forced to write."[68] The United States' directly contrary position in *303 Creative* is hard to explain based on anything other than its support for the message the State of Colorado was attempting to compel.

It is black letter law that no official "can prescribe what shall be orthodox…or force citizens to confess by word or act their faith therein."[69] Rather, the First Amendment places "the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity."[70] As the Supreme Court has noted, government officials have frequently sought to "coerce uniformity of sentiment in support of some end thought essential to their time and country."[71] In the face of such attempts to coerce orthodoxy, the DOJ should maintain its commitment to upholding the Constitution's neutral principles of free speech, which commit the government "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail."[72]

Pursuing Equal Protection for All Americans by Vigorously Enforcing Applicable Federal Civil Rights Laws in Government, Education, and the Private Sector. Entities across the private and public sectors in the United States have been besieged in recent years by an unholy alliance of special interests, radicals in government, and the far Left. This unholy alliance speaks in platitudes about advancing the interests of certain segments of American society, but that advancement comes at the expense of other Americans and in nearly all cases violates long-standing federal law.

Even though numerous federal laws prohibit discrimination based on notable immutable characteristics such as race and sex,[73] the Biden Administration—through the DOJ's Civil Rights Division and other federal entities—has enshrined affirmative discrimination in all aspects of its operations under the guise of "equity." Federal agencies and their components have established so-called diversity, equity, and inclusion (DEI) offices that have become the vehicles for this unlawful discrimination, and all departments and agencies have created "equity" plans to carry out these invidious schemes.[74] To reverse this trend, the next conservative Administration should:

- **Ensure that the DOJ spearheads an initiative demonstrating the federal government's commitment to nondiscrimination.** The department should also lead a whole-of-government recommitment to nondiscrimination and should be working with all other federal agencies, boards, and commissions to ensure that they are both complying with constitutional and legal requirements and using their authorities and funding to prevent discrimination not only internally, but also at the state, local, and private-sector levels. This will require particularly close coordination with several key agencies, including such obvious candidates as the Equal Employment Opportunity Commission; the Departments of Defense, Education, and Housing and Urban Development; and the Securities and Exchange Commission. It will also require enforcing contractual requirements that prohibit discrimination on federal contractors.

- **Reorganize and refocus the DOJ's Civil Rights Division to serve as the vanguard for this return to lawfulness.** The Attorney General and other DOJ political leadership should provide the resources and moral support needed for these efforts. The Civil Rights Division should spend its first year under the next Administration using the full force of federal prosecutorial resources to investigate and prosecute all state and local governments, institutions of higher education, corporations, and any other private employers who are engaged in discrimination in violation of constitutional and legal requirements.

Announcing a Campaign to Enforce the Criminal Prohibitions in 18 U.S. Code §§ 1461 and 1462 Against Providers and Distributors of Abortion Pills That Use the Mail. Federal law prohibits mailing "[e]very article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion."[75] Following the Supreme Court's decision in *Dobbs*, there is now no federal prohibition on the enforcement of this statute. The Department of Justice in the next conservative Administration should therefore announce its intent to enforce federal law against providers and distributors of such pills.

Reassigning Responsibility for Prosecuting Election-Related Offenses from the Civil Rights Division to the Criminal Division. The Attorney General in the next conservative Administration should reassign responsibility for prosecuting violations of 18 U.S. Code § 241[76] from the Civil Rights Division to the Criminal Division where it belongs. Otherwise, voter registration fraud and unlawful ballot correction will remain federal election offenses that are never appropriately investigated and prosecuted.[77]

Voter fraud includes unlawful practices concerning voter registration and ballot correction. When state legislatures are silent as to procedures for absentee ballot curing or provide specific rules governing that curing, neither counties nor courts may create a cure right where one does not exist, may not modify the law on curing, and certainly cannot engage in creating consent orders with the force of law that are inconsistent with the orders of other similarly situated counties.

The DOJ has ceded substantial discretion concerning voter suppression to the Civil Rights Division. Since the Bush Administration, DOJ leadership has determined that using the Election Crimes Branch to prosecute fraudulent voter registration, including mail-in ballot fraud, was too politically costly.[78] The Criminal Division's *Federal Prosecution of Election Offenses* handbook advised that schemes that violated equal protection constituted "voter suppression" prosecutable under 18 U.S. Code § 241 as part of the guidelines for which the department's criminal prosecutors were trained.[79] State-based investigations of election crimes are supposed to be referred to the Public Integrity Section for review. Historically, 18 U.S. Code § 241 (conspiracy against rights) was used as a basis for investigating state officials whose statements or orders violated the equal protection rights of voters or deliberately misinformed voters concerning the eligibility of their ballots.

Nevertheless, the Department of Justice has formalized the Civil Rights Division's (as opposed to the Criminal Division's) jurisdiction over 18 U.S. Code § 241 investigations and prosecutions. The Criminal Division is no longer involved in consultation or review of 18 U.S. Code § 241 investigations.[80] The Criminal Division has accordingly advised states that "[i]n the case of a crime of violence or intimidation," they should "call 911 immediately and before contacting federal authorities" because "[s]tate and local police have primary jurisdiction over polling places,"[81] despite clearly applicable federal law.

This is a mistake. With respect to the 2020 presidential election, there were no DOJ investigations of the appropriateness or lawfulness of state election guidance. Consider the state of Pennsylvania. The Secretary of State sent guidance to the counties stating that:

> This revised guidance addresses the issuance, voting and examination of provisional ballots under the Election Code. Provisional ballots were originally mandated by section 302 of the Help America Vote Act of 2002 (HAVA). Provisional ballot amendments included in Act 77 of 2019 went into effect for the 2020 Primary election. Provisional ballot amendments included in Act 12 of 2020 go into effect for the first time on November 3, 2020.[82]

HAVA, however, mandates provisional ballots only for eligible voters who were not on a state's voter registration list.[83] It does not apply to those who registered for mail-in voting but whose ballots were rejected due to some form of spoliation.

Pennsylvania Act 12 (amended in 2020) does not authorize curing by providing provisional ballots for mail-in voters whose ballots were rejected. Act 12 requires, as part of the mail-in application process, an affidavit that:

> [The elector] shall not be eligible to vote at a polling place on election day unless the elector brings the elector's mail-in ballot to the elector's polling place, remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and signs a statement subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) to the same effect.[84]

The law in Pennsylvania clearly states that no county may affirmatively provide provisional ballots: The mail-in voter must vote in person and sign a new affidavit. In the 2020 election, the Pennsylvania Supreme Court recognized that "the Election Code contains no requirement that voters whose ballots are deemed inadequately verified be apprised of this fact. Thus, unlike in-person voters, mail-in or absentee voters are not provided any opportunity to cure perceived defects in a timely manner."[85] Given the Pennsylvania Secretary of State's use of guidance to circumvent state law, the Pennsylvania Secretary of State should have been (and still should be) investigated and prosecuted for potential violations of 18 U.S. Code § 241.

Investigations and prosecutions under 18 U.S. Code § 241 are currently within the jurisdictional oversight of the Civil Rights Division, not the Criminal Division.[86] Only by moving authority for 18 U.S. Code § 241 investigations and prosecutions back to the Criminal Division will the rule of law be appropriately enforced.

Rejecting Third-Party Requests for Politically Motivated Investigations or Prosecutions. The DOJ should reject demands from third-party groups that ask it to threaten politically motivated investigation or prosecution of those engaging in lawful and, in many cases, constitutionally protected activity. By acceding to such demands, the department risks diminishing its credibility with the American public. This risk is exacerbated by the fact that communications between government officials and third-party groups are generally unprotected by privilege and subject to disclosure, whether via subpoena to the third-party group or via request made pursuant to the Freedom of Information Act. These communications can even be made public voluntarily by the third-party group.

A recent example illustrates the risks posed by such activity. On October 4, 2021, Attorney General Merrick Garland issued a memorandum to the Director of the FBI, the Executive Office for U.S. Attorneys, and the Assistant Attorney General, Criminal Division, calling on the FBI to work with each U.S. Attorney to "convene meetings with federal, state, local, Tribal, and territorial leaders" to discuss strategies for addressing "threats against school administrators, board members, teachers, and staff."[87] Subsequent reporting and investigation revealed that the

memorandum was prompted by a September 29, 2021, letter sent by the National School Boards Association (NSBA) to President Biden demanding a federal law enforcement response to perceived threats to school board members and public-school employees.

The NSBA letter made outlandish demands in response to protests that were then occurring at school board meetings in response to COVID policies and revelations about the use of critical race theory–infused curricula in classrooms. Among the letter's demands was a call for a federal investigation into parents' actions ("heinous actions" that "could be the equivalent to a form of domestic terrorism and hate crimes") under a variety of federal laws including the "Gun-Free Zones Act, the PATRIOT Act in regards to domestic terrorism, the Matthew Shepard and James Byrd Jr. Hate Crimes and Prevention Act, the Violent Interference with Federally Protected Rights statute, and the Conspiracy Against Rights statute" and "an Executive Order to enforce all applicable federal laws for the protection of students and public school district personnel, and any related measure."[88]

Both the Attorney General's memorandum and the NSBA letter drew swift public condemnation, including from 14 sitting state Attorneys General.[89] A subsequent internal investigation commissioned by the NSBA revealed that officials at the White House had been in discussions with NSBA officials about the contents of the letter weeks before it was issued. The investigation also revealed that White House officials indicated they planned to raise the contents of the draft letter with DOJ officials a full week before the NSBA's letter was issued.[90]

This cooperation by a third-party group, the White House, and the DOJ to craft and coordinate a response to an ill-advised and politically motivated letter undermines the department's credibility as an impartial law enforcement agency. In the words of the 14 state Attorneys General who wrote to oppose the department's memorandum, "potential collusion between the White House, the Department, and the NSBA in the actual creation of the September 29 letter—as a pretext for threats against parents—raises serious concerns."[91]

The DOJ should carefully scrutinize all requests for law enforcement assistance and reject requests by third parties to engage in political grandstanding that ignores the department's traditional jurisdictional limits and that would trample politically controversial but constitutionally protected activity.

Ensuring Proper Distribution of DOJ Grant Funds. DOJ grants are an underutilized asset in most conservative Administrations. When used properly, they can be highly effective in implementing the President's priorities. The Office of Justice Programs (OJP) is comprised of six components and is responsible for most DOJ grants to local law enforcement, juvenile justice, and victims of crime as well as for criminal justice research and statistics. The opportunity to support a President's agenda may be greater through OJP grant funding than it is through any of the other federal government's other grant-making components.

Consistent with appropriations from Congress, the OJP dispenses approximately $7 billion in various grants. Block grants are given to a state to be awarded pursuant to federal regulations. Some funds to support law enforcement and victims of crime are awarded pursuant to block grants. But most OJP funds are awarded through discretionary grants—specific programs written into the budget by Congress.

Although Congress dictates the way in which many grant awards are to be made, federal staff enjoy a tremendous amount of discretion in adding "conditions" and "priority points." Grants operate with a carrot and a stick. To receive grant funding, a recipient must agree to certain conditions, which in many instances include the President's priorities. For instance, under an anti–human trafficking grant during the Obama Administration (approximately $110 million in 2020), an awardee had to show a partnership with an LGBTQ organization and always have an interpreter on site. These conditions worked to change culture and overlayed President Obama's priorities: support for the LGBTQ community and for more of the funding to go to areas with large immigrant populations.

During the Trump Administration, a condition added to grants stated that an awardee had to comply with all federal law (stock language), including federal law regarding the exchange of information between federal and local authorities about an individual's immigration status. This condition prevented law enforcement in "sanctuary cities" from receiving grant awards. While the Trump Administration suffered a series of setbacks from several hostile courts, it obtained from the Second Circuit Court of Appeals a decision upholding the department's authority to impose these conditions.[92]

To ensure that taxpayer-funded grants are prioritized and distributed properly, the next conservative Administration should:

- **Conduct an immediate, comprehensive review of all federal grant disbursals to ensure not only that the programs are being properly administered by the department, but also that the grant funding is being received and used properly by recipients.**

- **Order an overhaul of the DOJ grant application process, to include more rigorous vetting of state, local, and private grant applicants and inclusion of more pre-application criteria to ensure baseline fitness and eligibility for federal grant dollars.** This long-overdue enhancement of the grant application and issuance process will ensure that hard-earned taxpayer dollars are going only to lawful actors who support federal law enforcement and demonstrate the ability and willingness to engage in lawful activities.

Ensuring Proper Enforcement and Administration of Our Immigration Laws. Although its role has changed over the years, most notably following the passage of the Homeland Security Act of 2002,[93] the Department of Justice plays a crucial role in the enforcement and adjudication of our immigration laws.[94] Its leadership and energy, however, have not always reflected the importance placed by Congress on the execution of that crucial mission. With a few notable exceptions, successful fulfillment of the department's responsibilities with respect to immigration was largely neglected until the Trump Administration. The Department of Homeland Security may be the largest federal department with immigration responsibilities, but successful fulfillment of the responsibilities prescribed by the immigration laws is not possible without bold and dedicated action by the Department of Justice.

The DOJ and its leadership must intentionally prioritize fulfillment of the department's immigration-related responsibilities in the next conservative Administration. This will be no small task, as these responsibilities play out across nearly every DOJ office and component. If they hope to fulfill their responsibilities as assigned by Congress and deliver results for the American people, the department and the Attorney General should:

- **Issue guidance to all U.S. Attorneys emphasizing the importance of prosecuting immigration offenses,[95] and immigration-related offenses.** The brunt of these offenses is born by districts along the southwestern border with Mexico, but the simple fact remains that immigration and immigration-related offenses are present in every district across the country. Successfully pursuing the priorities outlined in this chapter will require creative use of the various immigration and immigration-related authorities in close partnership with the Department of Homeland Security, the Department of State, and other appropriate federal entities depending on the situation.

- **Pursue appropriate steps to assist the Department of Homeland Security in obtaining information about criminal aliens in jurisdictions across the United States, particularly those inside "sanctuary" jurisdictions.**

- **Examine and consider the appropriateness of withdrawing or overturning every immigration decision rendered by Attorney General Garland (and any successor Attorney General during President Biden's term).** The Attorney General should pick up where the Attorneys General under President Trump left off and exercise his or her authority to adjudicate cases and provide guidance in appropriate cases to

correct erroneous decisions, provide clarity, and align Executive Office for Immigration Review (EOIR) decisions with the law.

- **At a minimum, pursue through rulemaking—and in partnership with the Department of Homeland Security where appropriate—the promulgation of every rule related to immigration that was issued during the Trump Administration.** Such rulemakings include guidance on continuances in immigration court cases, eligibility for asylum, and other related matters. However, the DOJ should not stop there: It should continually evaluate its authorities and operational reality within the immigration court system and promulgate regulations accordingly.

- **Commit sufficient resources to the adjudication of cases in the immigration court system in different environments (for example, in the context of the Migrant Protection Protocols).**

- **Pursue proactive litigation to advance the federal government's interests in areas where erroneous precedent curtails authorities provided by Congress (for example, by pursuing the overturning of the *Flores* Settlement Agreement).**

- **Pursue aggressive enforcement of the immigration laws within the Immigrant and Employee Rights Section of the Civil Rights Division to ensure that no American citizen is discriminated against in the employment context in favor of a temporary or foreign worker.**[96]

- **Ensure the deployment and use of appointees throughout the department who are committed to successful achievement of the department's immigration-related missions.** This includes personnel in or overseeing not only the EOIR, but also the Office of the Attorney General, Office of the Deputy Attorney General, Office of the Associate Attorney General, Office of the Solicitor General, and nearly every other component/office throughout the department.

- **Pursue a more vigorous anti-fraud program within the EOIR.** In perhaps no other area of law are there more attorneys who commit acts of fraud against their clients—advancing completely meritless arguments in exchange for exorbitant fees—than there are in the area of immigration. Fraud and unethical behavior are rampant in the immigration system and must be addressed—not only to ensure that the federal government is operating in a proper manner, but also for the sake of the aliens involved in

the process as well as the integrity/credibility of the members of the private immigration bar who do not engage in such conduct.

ADDITIONAL ESSENTIAL REFORMS

Aligning Departmental Resources with Leadership Priorities Across All Components and U.S. Attorneys' Offices. As the next Administration pursues its objectives, it should use the department's resources efficiently in a manner that delivers results for the American people. To accomplish this goal, it will be necessary to:

- **Ensure the assignment of sufficient political appointees throughout the department.** Ensuring adequate accountability throughout the DOJ requires the intentional devotion of sufficient resources by the Administration—not simply replicating what was done under prior Administrations and reflected in the Plum Book.[97] The number of appointees serving throughout the department in prior Administrations—particularly during the Trump Administration—has not been sufficient either to stop bad things from happening through proper management or to promote the President's agenda.

  It is not enough for political appointees to serve in obvious offices like the Office of the Attorney General or the Office of the Deputy Attorney General. The next conservative Administration must make every effort to obtain the resources to support a vast expansion of the number of appointees in every office and component across the department—especially in the Civil Rights Division, the FBI, and the EOIR.

- **End all nonessential details of department personnel—particularly those detailed to congressional offices—until the department can conduct a thorough review of its personnel needs.** Considering all of the many challenges facing the DOJ, the next conservative Administration should terminate and recall all details of DOJ personnel shortly after the President's inauguration. After a thorough analysis of the department's resources and priorities is completed, details to other portions of the executive branch and to Congress can resume.

- **Ensure accountability for personnel sanctioned or referred for discipline after a finding of misconduct.** The next conservative Administration should complete a thorough review of any sanctions or findings of misconduct issued over the four years preceding the inauguration to ensure that the Biden Administration acted appropriately in response to any such sanctions or findings.

- **Undertake a comprehensive review of DOJ hiring practices.** The next conservative Administration should conduct a holistic review of hiring practices employed across all DOJ offices and components to ensure that those practices comply with applicable law and policy. All hiring committees associated with hiring for career positions across the department should be assessed for impartiality to ensure that individuals are hired based on merit, aptitude, and legal skill and not based on association with or membership in certain ideologically aligned groups or based on illegal considerations such as race, religion, or sex.

Eliminating Redundant Offices and Consolidating Functions to Increase Efficiencies. The next conservative Administration should explore the possibility of consolidating and aligning the functions of the DOJ's various components and offices in human resources, legal counsel, public relations, and other related areas. While local access to appropriate personnel and resources is important, there are inefficiencies and redundancies across the department that result in a bureaucratic, Rube Goldberg–style design that ultimately hinders the department's mission. From IT infrastructure to management functions to public relations, DOJ leadership should explore consolidation and intradepartmental efficiencies to obtain the best possible support for its critical missions.

For example, the Department of Public Affairs has a dual structure of public information officers in which there are some political appointees who lead the office and provide support, but also career appointees who serve as public information officers for individual divisions (Criminal Division, National Security Division, etc.). The career officials handle the day-to-day work of the division, which entails monitoring important cases, assisting in editing, and distributing press releases, and the political appointees will step in for larger issues that advance the Administration's initiatives. This could be made more efficient by having political appointees for each division under the supervision of the Director of Public Affairs.

Additionally, given the interplay of function between the Office of Legislative Affairs (OLA) and the Office of Public Affairs, as well as the fact that the Assistant Attorney General for the OLA is a Senate-confirmed position, the two offices should be folded into one for more efficiency and proper coordination. Under an Office of Public and Legislative Affairs, the Assistant Attorney General's portfolio would encompass both, with one Director/Deputy for Public Affairs and one Director/Deputy for Legislative Affairs.

Pursuing Other Changes in Reporting Chains to Ensure Consistency with the Law and Administration Priorities. The next conservative Administration should undertake a comprehensive review of the DOJ's current organizational chart and make decisions about its structure—consistent with any authority to do

so outside of congressional action—to ensure the most efficient accomplishment of the department's missions. For example:

- Is the current reporting structure for the Associate Attorney General's Office the best and optimal for the achievement of the department's mission?

- Should all of the Deputy Attorney General's direct reports continue to be direct reports, or would a different structure achieve a better, more efficient outcome in fulfilling the department's mission?

- What should the Office of Legal Policy's role be in the next conservative Administration? Should it continue to be responsible for assisting with judicial nominations, or should that function be assigned to the Office of Legislative Affairs, which interacts with Congress on a daily basis?

Pursuing Legislative Changes for Assistant United States Attorneys' Compensation. To ensure that the department can attract and retain top legal talent away from Washington, D.C., the next conservative Administration should seek congressional reform of the pay scale used for Assistant United States Attorneys in the field. At a minimum, that reform should include a proposal to compensate Assistant United States Attorneys on at least the same basis as attorneys employed by Main Justice who are compensated under the GS scale. Ensuring that the department can attract and retain top legal talent outside of the D.C. market is essential and will help to emphasize the importance of the field's work in achieving the department's various missions.

Protecting the Integrity of the Bureau of Justice Statistics and the National Institute of Justice. The DOJ's statistical and research arms should serve the American people and not special interests. The Director of the Bureau of Justice Statistics should focus the BJS on producing the statistics of greatest interest to everyday Americans, and hence of policymakers, rather than those of particular interest to criminal-justice academics. The Director should insist that such statistics be as accurate as possible and presented as clearly as possible. The intellectually engaged, everyday American citizen should be able to read and understand the BJS's published statistics and reports rather than having to trust "experts" because the statistics are not clear.

The BJS should focus on the core statistics involving crime and punishment, such as those relating to serious crimes committed, imprisonment, time served, recidivism, and the like. It should not pursue the niche political agendas of academics or advocates. Moreover, a clear line should be maintained between official government statistics and third-party contractor reports. There should be no reports that look like official BJS reports but are authored by private entities such as the Urban Institute as happened under the Obama Administration.

Research funded by the National Institute of Justice should follow similar principles. The NIJ should fund high-quality, unbiased research on the topics of greatest interest to everyday Americans and policymakers rather than agenda-driven research desired by advocates or academics.

The National Crime Victimization Survey, which is the nation's largest crime survey and predates the BJS (it dates to the Nixon Administration), is of particular importance, and the department should prioritize and sufficiently fund it. This survey provides the only comprehensive and credible alternative to police reports for showing who commits crimes. The demographic information that crime victims provide through the survey about who commits crimes against them enables such reports as "Race and Ethnicity of Violent Crime Offenders and Arrestees, 2018,"[98] which was published in January 2021 and finds that police are arresting those who, according to victims, actually commit crimes.

AUTHOR'S NOTE: The preparation of this chapter involved contributions from members of the 2025 Presidential Transition Project. Most contributors to this chapter are listed at the front of this volume—and in the perfect cancel-proof world, all contributors of ideas would be listed—but the staff at America First Legal Foundation deserves special mention for their assistance while juggling other responsibilities. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

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18

DEPARTMENT OF LABOR AND RELATED AGENCIES

Jonathan Berry

MISSION STATEMENT

At the heart of *The Conservative Promise* is the resolve to reclaim the role of each American worker as the protagonist in his or her own life and to restore the family as the centerpiece of American life. The role that labor policy plays in that promise is twofold: Give workers the support they need for rewarding, well-paying, and self-driven careers, and restore the family-supporting job as the centerpiece of the American economy. The Judeo-Christian tradition, stretching back to Genesis, has always recognized fruitful work as integral to human dignity, as service to God, neighbor, and family. And Americans have long been known for their work ethic. While it is primarily the culture's responsibility to affirm the dignity of work, our federal labor and employment agencies have an important role to play by protecting workers, setting boundaries for the healthy functioning of labor markets, and ultimately encouraging wages and conditions for jobs that can support a family.

OVERVIEW

The labor agencies covered in this chapter include the Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB), the National Mediation Board (NMB), the Federal Mediation and Conciliation Service (FMCS), and the Pension Benefit Guaranty Corporation (PBGC). Congress has provided these agencies with the authority to enforce a wide range of federal statutes regulating workplace conduct, workforce development, employee benefits, labor organization and bargaining, and international labor conditions.

In the sweep of American history, these authorities are relatively new. They largely come from Congress's attempts in the middle of the 20th century to resolve major political questions brought about by labor conflict, the civil rights movement, and the emergence of the modern workplace. The 21st century has brought about new challenges, ranging from collapsing manufacturing sector employment and a decrease in family-supporting jobs, to the massive expansion of an increasingly radical human-resources bureaucracy. In many cases, these challenges are as significant as the 20th century labor crises and workplace changes that the agencies were developed to manage.

But the agencies have failed to respond to these challenges. Despite significant progress by the Trump Administration, a massive administrative state now hangs over productive industry and labor organization, acting as a damper on social and economic life. And under the Biden Administration, that administrative state has imposed the most assertive left-wing social-engineering agenda in the agencies' history and ratcheted up regulatory costs on small businesses and other productive industry. The agencies' authorities have been abused by the Left to favor human resources bureaucracies, climate-change activists, and union bosses—all against the interest of American workers.

NEEDED REFORMS

Reverse the DEI Revolution in Labor Policy. Under the Obama and Biden Administrations, labor policy was yet another target of the Diversity, Equity, and Inclusion (DEI) revolution. Under this managerialist left-wing race and gender ideology, every aspect of labor policy became a vehicle with which to advance race, sex, and other classifications and discriminate against conservative and religious viewpoints on these subjects and others, including pro-life views. The next Administration should eliminate every one of these wrongful and burdensome ideological projects.

Eliminate Racial Classifications and Critical Race Theory Trainings. The Biden Administration has pushed "racial equity" in every area of our national life, including in employment, and has condoned the use of racial classifications and racial preferences under the guise of DEI and critical race theory, which categorizes individuals as oppressors and victims based on race. Nondiscrimination and equality are the law; DEI is not. Title VII flatly prohibits discrimination in employment on the basis of race, color, and national origin. The President should:

- **Issue an executive order banning, and Congress should pass a law prohibiting the federal government from using taxpayer dollars to fund, all critical race theory training (CRT).**

- **Direct DOJ and EEOC to enforce Title VII.** The President should direct the Department of Justice and Equal Employment Opportunity Commission to enforce Title VII to prohibit racial classifications and quotas,

including human-resources classifications and DEI trainings that promote critical race theory.

- **Eliminate EEO-1 data collection.** The Equal Employment Opportunity Commission collects EEO-1 data on employment statistics based on race/ethnicity, which data can then be used to support a charge of discrimination under a disparate impact theory. This could lead to racial quotas to remedy alleged race discrimination. (The Office of Federal Contract Compliance Programs (OFCCP) also has a right to the data EEOC collects.) Crudely categorizing employees by race or ethnicity fails to recognize the diversity of the American workforce and forces individuals into categories that do not fully reflect their racial and ethnic heritage.

- **Amend Title VII.** The next Administration should work with Congress to amend Title VII to prohibit the Equal Employment Opportunity Commission from collecting EEO-1 data and any other racial classifications in employment for both private and public workplaces.

- **Eliminate disparate impact liability.** With interracial marriages in America increasing, many Americans do not fit neatly into crude racial categories.[1] Under disparate impact theory, moreover, discriminatory motive or intent is irrelevant; the outcome is what matters. But *all* workplaces have disparities.

Congress should:

- **Eliminate disparate impact as a valid theory of discrimination for race and other bases under Title VII and other laws.** Disparities do not (and should not legally) imply discrimination per se.

The President should:

- **Sign an executive order explicitly forbidding OFCCP from using disparate impact in its analysis.**

- **Eliminate OFCCP.** The Office of Federal Contract Compliance Programs (OFCCP) exists to enforce Executive Order (EO) 11246.[2] That order was originally signed in 1965 to require federal contractors (and subcontractors) to commit to nondiscrimination. It gave enforcement authority to the Department of Labor, up to and including debarment from federal contracting. The Equal Employment Opportunity Commission has since

grown, often making OFCCP's authority redundant and imposing a second regulatory agency under whose rules businesses must operate. In addition, under EO 11246, the President and DOL can force a huge swath of American employers to comply with rules and regulations based on novel anti-discrimination theories (such as sexual orientation and gender identity theories) that Congress had never imposed by statute.

- **Rescind EO 11246.** The President should eliminate OFCCP by simply rescinding EO 11246. Federal contractors would still be bound by statutory nondiscrimination law but would no longer work under overlapping regimes. (Contractors' residual obligations under Section 503 of the Rehabilitation Act and Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) could be enforced by EEOC or DOL.) Contractors also would be less subject to the changing political whims of a President that might impose significant new costs or burdens on the contractors.

Sex Discrimination. The Biden Administration, LGBT advocates, and some federal courts have attempted to expand the scope and definition of sex discrimination, based in part on the Supreme Court's decision in *Bostock v. Clayton County*. *Bostock* held that "an employer who fires someone simply for being homosexual or transgender" violates Title VII's prohibition against sex discrimination. The Court explicitly limited its holding to the hiring/firing context in Title VII and did not purport to address other Title VII issues, such as bathrooms, locker rooms, and dress codes, or other laws prohibiting sex discrimination. Notably, the Court focused on the status of the employees and used the term "transgender status" rather than the broader and amorphous term "gender identity."

- **Restrict the application of *Bostock*.** The new Administration should restrict *Bostock*'s application of sex discrimination protections to sexual orientation and transgender status in the context of hiring and firing.

- **Withdraw unlawful "notices" and "guidances."** The President should direct agencies to withdraw unlawful "notices" and "guidances" purporting to apply *Bostock*'s reasoning broadly outside hiring and firing.

- **Rescind regulations prohibiting discrimination on the basis of sexual orientation, gender identity, transgender status, and sex characteristics.** The President should direct agencies to rescind regulations interpreting sex discrimination provisions as prohibiting discrimination on the basis of sexual orientation, gender identity, transgender status, sex characteristics, etc.

- **Direct agencies to refocus enforcement of sex discrimination laws.** The President should direct agencies to focus their enforcement of sex discrimination laws on the biological binary meaning of "sex."

PRO-LIFE MEASURES

- **Promote pro-life workplace accommodations for mothers.** Federal law should protect life and promote pro-family policies. Current law, the Pregnancy Discrimination Act,[3] provides nondiscrimination protections in the workplace for pregnancy, childbirth, or related medical conditions. The Pregnant Workers Fairness Act (PWFA)[4] requires employers to make reasonable accommodations for women "to the known limitations related to the pregnancy, childbirth, or related medical conditions," unless "the accommodation would impose an undue hardship on the operation of the [employer's] business." The Americans with Disabilities Act (ADA) also provides nondiscrimination and accommodation protections in the workplace for certain pregnancy-related disability.[5] None of these laws requires an employer provide health insurance benefits for elective abortion.

- **Pass a law requiring equal (or greater) benefits for pro-life support for mothers and clarifying abortion exclusions.** Congress should pass a law requiring that to the extent an employer provides employee benefits for abortion, it must provide equal or greater benefits for pregnancy, childbirth, maternity, and adoption. That law should also clarify that no employer is required to provide any accommodations or benefits for abortion.

- **Keep anti-life "benefits" out of benefit plans.** Some benefits attorneys and pro-choice advocates have argued since the Supreme Court's *Dobbs v. Jackson Women's Health Organization* decision[6] that the longstanding doctrine of Employee Retirement Income Security Act of 1974 (ERISA)[7] preemption should block individual states' efforts to prohibit employers from helping employees procure abortions via offering various kinds of coverage under employee-sponsored benefit plans. ERISA should not be allowed to trump states' ability to protect innocent human life in the womb. Congress and DOL should clarify that ERISA does not preempt states' power to restrict abortion, surrogacy, or other anti-life "benefits."

RELIGION

- **Provide robust protections for religious employers.** America's religious diversity means that workplaces include people of many faiths and that many employers are faith-based. Nevertheless, the Biden Administration has been hostile to people of faith, especially those with traditional beliefs

about marriage, gender, and sexuality. The new Administration should enact policies with robust respect for religious exercise in the workplace, including under the First Amendment, the Religious Freedom Restoration Act of 1993 (RFRA),[8] Title VII, and federal conscience protection laws.

- **Issue an executive order protecting religious employers and employees.** The President should make clear via executive order that religious employers are free to run their businesses according to their religious beliefs, general nondiscrimination laws notwithstanding, and support participation of religious employees and employers as federal contractors and in federal activities and programs.

- **Clarify Title VII's religious organization exemptions.** Congress should clarify Title VII's religious organization exemptions to make it more explicit that those employers may make employment decisions based on religion regardless of nondiscrimination laws.

- **Provide Robust Accommodations for Religious Employees.** Title VII requires reasonable accommodations for an employee's sincerely held religious beliefs, observances, or practices unless it poses an undue hardship on the employer's business. These accommodation protections also apply to issues related to marriage, gender, and sexuality.

  Unless the Supreme Court overrules its bad precedent, Congress should clarify that undue hardship means "significant difficulty or expenses," not "more than a de minimis cost" as the Court has previously held.

General EEOC Reforms. The Equal Employment Opportunity Commission (EEOC) does not have rulemaking authority under Title VII and other laws it enforces, yet it issues "guidance," "technical assistance," and other documents, including some that push new policy positions. EEOC should disclaim its regulatory pretensions and abide by the guidance reforms discussed below.

- **EEOC should disclaim its regulatory pretensions.**

- **Affirm decision-making via majority vote of Commissioners.** EEOC should affirm as policy the Title VII requirement that it exercise substantive power via majority vote of Commissioners, not by unilateral Chair action or by delegation to staff.

- **Disclaim power to enter into consent decrees.** EEOC should disclaim power to enter into consent decrees that require employer actions that it could not require under the laws it enforces.

- **Reorient enforcement priorities.** EEOC should reorient its enforcement priorities toward claims of failure to accommodate disability, religion, and pregnancy (but not abortion).

Refocusing Labor Regulation on the Good of the Family. The DEI revolution in labor affected not only the administrative state, but it has also targeted much of the private sector. Owing to the combination of regulatory pressure and eager human resources offices in the private sector, much of American labor and employment policy has become institutionally oriented toward "woke" goals. Retracting regulations that support this revolution is a good first step, but more is needed. We must replace "woke" nonsense with a healthy vision of the role of labor policy in our society, starting with the American family.

- **Allow workers to accumulate paid time off.** Lower- and middle-income workers are more likely be in jobs that are subject to overtime laws that require employers to pay time-and-a-half for working more than 40 hours a week.

- **Congress should enact the Working Families Flexibility Act.** The Working Families Flexibility Act would allow employees in the private sector the ability to choose between receiving time-and-a-half pay or accumulating time-and-a-half paid time off (a choice that many public sector workers already have). For example, if an individual worked two hours of overtime every week for a year, he or she could accumulate four weeks of paid time off to use for paid family leave, vacation, or any reason.

- **Congress should incentivize on-site childcare.** Across the spectrum of professionalized childcare options, on-site care puts the least stress on the parent-child bond.

- **Congress should amend the Fair Labor Standards Act (FLSA) to clarify that an employer's expenses in providing on-site childcare are not part of an employee's regular rate of pay.**

- **DOL should commit to honest study of the challenges for women in the world of professional work.** The Women's Bureau at DOL tends towards a politicized research and engagement agenda that puts predetermined conclusions ahead of empirical study.

- **The Bureau should rededicate its research budget towards open inquiry, especially to disentangle the influences on women's workforce participation and to understand the true causes of earnings gaps between men and women.**

- **Equalize retirement savings access across married households.** The limit on individual contributions to a 401(k), 403(b), or similar work-based retirement account is $22,500 for 2023. Individuals who do not work or do not have access to a work-based retirement account can save up to $6,500 in an IRA. This individual-based system creates a disadvantage for married couples with only one spouse who works (or with two working spouses, one of whom earns less than the maximum retirement account contribution).

- **To equalize access to tax-free retirement savings for married couples, the limit for married couples on 401(k) and similar work-based retirement savings accounts should be double the limit for individuals, regardless of the allocation of work between the couple.**

Family Statistics. Every month, DOL's Bureau of Labor Statistics surveys tens of thousands of households to generate detailed estimates of labor market conditions and price levels. And every quarter, the Department of Commerce's Bureau of Economic Analysis estimates the change in the entire economy's output to the fraction of a percentage point. Yet data on the state of the American family and its economic welfare are released at best annually, and generally a year or more after the fact. Metrics like marriage and fertility rates, the share of children living with both biological parents, the cost of a standard basket of middle-class essentials, and the share of families whose highest-income worker earns more than twice the poverty threshold should be measured and reported monthly and in real-time and incorporated in releases for other labor statistics.

- **Congress should establish an Assistant Commissioner for Family Statistics within the Bureau of Labor Statistics.**

- **Congress should require the Bureau to establish a pilot survey with a sample comparable to the BLS Current Population Survey that would publish monthly estimates for measures of the American family's wellbeing, and appropriate sufficient funds for that purpose.**

- **Congress should require that the Consumer Price Index market basket include measurable family-essential goods.**

Alternative View. While metrics on the state of American families and civil society are important and useful, monthly statistics would be of little additional value and could end up causing unnecessary confusion and concern. Funding should be oriented towards improving the timeliness of annual family statistics.

Sabbath Rest. God ordained the Sabbath as a day of rest, and until very recently the Judeo-Christian tradition sought to honor that mandate by moral and legal regulation of work on that day. Moreover, a shared day off makes it possible for families and communities to enjoy time off together, rather than as atomized individuals, and provides a healthier cadence of life for everyone. Unfortunately, that communal day of rest has eroded under the pressures of consumerism and secularism, especially for low-income workers.

- **Congress should encourage communal rest by amending the Fair Labor Standards Act (FLSA)[9] to require that workers be paid time and a half for hours worked on the Sabbath.** That day would default to Sunday, except for employers with a sincere religious observance of a Sabbath at a different time (e.g., Friday sundown to Saturday sundown); the obligation would transfer to that period instead. Houses of worship (to the limited extent they may have FLSA-covered employees) and employers legally required to operate around the clock (such as hospitals and first responders) would be exempt, as would workers otherwise exempt from overtime.

Alternative View. While some conservatives believe that the government should encourage certain religious observance by making it more expensive for employers and consumers to not partake in those observances, other conservatives believe that the government's role is to protect the free exercise of religion by eliminating barriers as opposed to erecting them. Whereas imposing overtime rules on the Sabbath would lead to higher costs and limited access to goods and services and reduce work available on the Sabbath (while also incentivizing some people—through higher wages—to desire to work on the Sabbath), the proper role of government in helping to enable individuals to practice their religion is to reduce barriers to work options and to fruitful employer and employee relations. The result: ample job options that do not require work on the Sabbath so that individuals in roles that sometimes do require Sabbath work are empowered to negotiate directly with their employer to achieve their desired schedule.

Teleworking. COVID made telework ubiquitous, but the law and regulations are still stuck in an era when telework was unique.

- **Congress should clarify that overtime for telework applies only if the employee exceeds 10 hours of work in a specific day (and the total hours for the week exceed 40).**

- **DOL should clarify that an employee given the option to telework need only record time if the quantity of work assigned for that day exceeds the usual amount of work that employee performs so that the employee need not track every time he logs in and out and the employer need not do so either.**

- **DOL should clarify that a home office is *not* subject to OSHA regulations and that time to set up a home office is not compensable time or eligible for overtime calculations. DOL should likewise clarify that reimbursement for home office expenses is not part of an employee's regular rate, even if those reimbursements are repetitive (such as for internet or cell phone service).**

Making Family-Sustaining Work Accessible. Our national work ethic is an American hallmark. As Benjamin Franklin once said, "America is the land of labor." Much of American life is mediated by Americans coming together to take responsibility for solving problems and helping their communities. Our labor agenda must allow community institutions, including small businesses, schools and universities, religious organizations, and worker organizations, to thrive.

Protect flexible work options and worker independence (independent contractors). Roughly 60 million Americans across all income groups, ages, education levels, races, and household types participate in independent work, including full-time, part-time, or as a "side hustle." People choose independent work for a variety of reasons, including flexibility, earnings potential, and the desire to be one's own boss. An economic analysis of data from one million Uber drivers found that they valued the flexibility of the platform at 40 percent of their earnings, and the average Uber driver would not work at all if he or she had to submit to a taxi-cab schedule. The value of flexibility extends beyond ride-sharing and other platform work; more than half of people who did independent work in 2021 said they cannot work a traditional job because of personal or family circumstances such as their health or caring for a child or family member.

Independent workers, or contractors, are also critical to entrepreneurship and small-business growth and success. On average, employers with four or fewer employees rely on seven contractors to run their business. Without the ability to hire those contractors, many small businesses could not compete with larger ones that can afford to employ workers in-house.

Businesses and workers currently must navigate many different definitions of who is and who is not an employee (or an independent contractor) based on federal and state employment, compensation, tort, tax, and pension laws. This complexity often leads to confusion, improper classification, and costly litigation. The Trump Administration finalized rules to provide clarity on which workers

qualify as an independent contractor or employee under the FLSA and NLRA. The Biden Administration is replacing those rules with vague and expansive definitions that would add uncertainty, increase costs, and reduce options for Americans who want to work independently.

- **NLRB and DOL should return to their 2019 and 2021 independent contractor rules that provided much-needed clarity for workers and employers.**

- **Congress should establish a bright-line test—based on the level of control an individual exercises over his or her work—to determine whether a payee is an employee or an independent contractor, across all relevant laws.** This would prevent continued uncertainty as well as provide continuity across federal laws.

- **Congress should provide a safe harbor from employer-employee status for companies that offer independent workers access to earned benefits.** Doing so would increase access among independent contractors to traditional pooled workplace benefits such as health care and retirement savings accounts.

Protect Small Businesses and Entrepreneurship (Joint Employer). Millions of businesses across America engage in mutually beneficial affiliation arrangements with other businesses. These arrangements include janitorial services, staffing firms, construction contractors and subcontractors, technology support services, and many other vendor and contracting services. They also include the nearly 775,000 independently owned franchise businesses, which employ 8.2 million workers across the United States. The franchise structure offers a proven business model for individuals who want to own and operate their own small business. An Obama-era regulation changed the definition of a joint employer to make corporate franchisors jointly liable for employees of individual franchisee owners, even without the franchisor exercising any direct control over those employees. The Biden Administration is advancing an even more expansive definition of a joint employer that would upend the franchise business model, taking away ownership and income opportunities from small-business entrepreneurs, costing jobs, and raising prices.

- **DOL and NLRB should return to the long-standing approach to defining joint employers based on direct and immediate control.**

- **Congress should enact the Save Local Business Act, which would codify the long-standing definition that has existed outside the Obama-era and Biden-proposed rules.**

Overtime Pay Threshold. Overtime pay is one of the most challenging aspects of the Fair Labor Standards Act rules. "Nonexempt workers" (e.g., workers whose job duties fall within the law's power or whose total pay is low enough) must be paid overtime (150 percent of the "regular rate") for every hour over 40 in a workweek. Overtime requirements may discourage employers from offering certain fringe benefits such as reimbursement for education, childcare, or even free meals because the benefits' value may be included in the "regular rate" that must be paid at 150 percent for all overtime hours. And because some of these fringe benefits may be more valuable (and often come with tax preferences that benefit the worker), the goal should be to set a threshold to ensure lower-income workers have the protections of overtime pay without discouraging employers from offering these benefits.

- **DOL should maintain an overtime threshold that does not punish businesses in lower-cost regions (e.g., the southeast United States).** The Trump-era threshold is high enough to capture most line workers in lower-cost regions. One possibility to consider (likely requiring congressional action) would be to automatically update the thresholds every five years using the Personal Consumption Expenditures (PCE) as an inflation adjustment. This could reduce the likelihood of a future Administration attempting to make significant changes but would also impose more adjustments on businesses as those automatic increases take hold.

- **Congress should clarify that the "regular rate" for overtime pay is based on the salary paid rather than all benefits provided.** This would enable employers to offer additional benefits to employees without fear that those benefits would dramatically increase overtime pay.

- **Congress should provide flexibility to employers and employees to calculate the overtime period over a longer number of weeks.** Specifically, employers and employees should be able to set a two- or four-week period over which to calculate overtime. This would give workers greater flexibility to work more hours in one week and fewer hours in the next and would not require the employer to pay them more for that same total number of hours of work during the entire period.

Compliance-Assistance Programming. Labor agencies are often tempted to encourage "over compliance" by companies subject to regulation by pursuing "regulation through enforcement" strategies. Rather than giving regulated entities clear boundaries for what they can and cannot do under the law, the agencies

rely on the vagueness of the law to bring enforcement activity against businesses that fail to meet an inspector or agency head's personal standard. This is not fair to regulated parties and results in disfavored companies bearing the brunt of the agencies' enforcement efforts even though their behavior may be within the mainstream of employer behavior.

- **Labor agencies should provide compliance assistance to help businesses and workers better understand the agencies' position on their own rules and should do so in a way that makes it easier to follow those rules.** This frees people to focus on their work rather than slogging through an ever-growing body of laws, rules, and guidance documents generated by the agencies.

Clear and Restrictive Rules on Guidance Documents. Federal agencies not only issue regulations to fill in gaps left by legislation, but also supplement those regulations with "guidance" documents that occupy a unique and often confusing area between law and "helpful advice." Unfortunately, wielded by overzealous enforcement agents, such guidance, some of it even hidden from public view, morphs into binding law used against unsuspecting employers. Guidance can be a tricky thing and can be used for good or bad. It should be used to make complicated regulations easier to understand, so that businesses can do their actual jobs and focus on providing jobs to American workers and value to consumers (really, compliance assistance). But guidance is often used to create new rules overnight without following legal requirements—like giving the public an opportunity to provide valuable input. This wrongful use of guidance hurts workers and those who employ them. In October 2019, President Trump signed an executive order ending this abusive practice and created a new, fairer system for American businesses and their employees. In response, DOL published its PRO Good Guidance rule,[10] which expressly limits its use of guidance in enforcement actions and gives the public the opportunity to submit comments to influence the department's decisions on creating, revising, and even rescinding guidance. Under this rule, agencies cannot treat guidance as legally binding and must make all guidance documents readily accessible on their searchable online databases. This rule was immediately rescinded by the Biden Administration.

- **DOL should reinstitute the PRO Good Guidance rule via notice and comment.**

- **Congress should amend the Administrative Procedure Act[11] to explicitly limit the use of guidance documents.**

Exemptions from Regulations for Small Business. Burdensome regulations have anti-competitive effects. In general, larger, higher-margin businesses are better able to absorb the costs of regulatory compliance than are small businesses, and under the Biden Administration, big-business lobbies have affirmatively embraced certain regulations (such as the COVID vaccine mandate for private employers) to reduce competition from smaller businesses. Research suggests that labor regulations may pose the highest aggregate regulatory cost for small businesses.

- **The labor agencies should exercise their available discretion and duties under the Regulatory Flexibility Act[12] to exempt small entities from regulations where possible.**

- **Congress should enact legislation increasing the revenue thresholds at which the National Labor Relations Board asserts jurisdiction over employers to match changes in inflation that have occurred since 1935 and better reflect the definition of "small business" used by the federal government.**

- **Congress (and DOL, in its enforcement discretion) should exempt small business, first-time, non-willful violators from fines issued by the Occupational Health and Safety Administration.**

EDUCATION AND VOCATIONAL TRAINING

Apprenticeships. The next Administration should return to prior policy and implement an industry-recognized apprenticeship program separate from the Registered Apprenticeship Program (RAP) and explore how best to modernize, streamline, and eliminate duplication in the RAP. For roughly 80 years, the RAP—which requires conforming to government standards and includes federal funding, tax credits, and other federal resources—has dominated apprenticeship programs in the U.S. Organizations across the political spectrum have noted that the overly burdensome requirements of RAPs have contributed to limiting them to legacy trades, failing to meet growing industry demands such as in health care and technology. A 2017 study estimated that the number of occupations commonly filled through apprenticeships could nearly triple (from 27 to 74), that the number of job openings filled through apprenticeships could expand eightfold (to 3.2 million), and that the occupations ripe for apprenticeship expansion could offer 20 percent higher wages than traditional apprenticeship occupations.

The Trump Administration expanded apprenticeship options through the creation of the Industry-Recognized Apprenticeship Program (IRAP), and more than 130 IRAPs were created. The Biden Administration rescinded the IRAP regulations.

- **Congress should expand apprenticeship programs outside of the RAP model, re-creating the IRAP system by statute and allowing approved entities such as trade associations and educational institutions to recognize and oversee apprenticeship programs.**

  In addition, religious organizations should be encouraged to participate in apprenticeship programs. America has a long history of religious organizations working to advance the dignity of workers and provide them with greater opportunity, from the many prominent Christian and Jewish voices in the early labor movement to the "labor priests" who would appear on picket lines to support their flocks. Today, the role of religion in helping workers has diminished, but a country committed to strengthening civil society must ask more from religious organizations and make sure that their important role is not impeded by regulatory roadblocks or the bureaucratic status quo.

- **Encourage and enable religious organizations to participate in apprenticeship programs, etc.** Both DOL and NLRB should facilitate religious organizations helping to strengthen working families via apprenticeship programs, worker organizations, vocational training, benefits networks, etc.

Hazard-Order Regulations. Some young adults show an interest in inherently dangerous jobs. Current rules forbid many young people, even if their family is running the business, from working in such jobs. This results in worker shortages in dangerous fields and often discourages otherwise interested young workers from trying the more dangerous job. With parental consent and proper training, certain young adults should be allowed to learn and work in more dangerous occupations. This would give a green light to training programs and build skills in teenagers who may want to work in these fields.

- **DOL should amend its hazard-order regulations to permit teenage workers access to work in regulated jobs with proper training and parental consent.**

Workforce Training Grant Program. The federal government spends more than $100 billion per year subsidizing higher education but close to zero supporting people on non-college pathways.

- **Congress should create an employer grant worth up to $10,000 per year or pro-rated portion thereof for each worker engaged in**

on-the-job training, defined as some share of paid time spent in a formal training program.

To qualify, a program—whether run by the employer, an industry consortium, a community college, or a union—would need to define program length, curriculum, career path, and credential and to report regularly on outcomes for participants. Programs that fail to deliver promised results would be disqualified from continued funding. Funding for employer grants should come from existing higher education subsidies that are currently disadvantaging alternative education options.

Federal "BA Box." The American labor market continues to experience a glut of college degrees. The country produces more college graduates than suitable jobs for them to fill. Meanwhile, employers exacerbate the problem, fueling demand for college by needlessly requiring degrees for many jobs. In 2020, the Trump Administration took an important step toward pro-worker, skills-based hiring practices. Executive Order 13932, Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates,[13] directed the Office of Personnel Management to reduce degree-based practices in the federal civil service. Maryland's Governor Larry Hogan issued an executive order in 2022 to adopt this rule for Maryland state employees, and Utah's Governor Spencer Cox in December of 2022 announced that Utah would do the same. Today, federal civil service job descriptions must "be based on the specific skills and competencies required to perform those jobs," and may prescribe a "minimum educational requirement" only if it is otherwise legally required. The same policies do not extend beyond the civil service. Federal agencies continue to require college degrees for contract employees, and federal contractors are rarely able to place workers without four-year degrees on federal projects, regardless of their qualifications. Private employers consistently impose a BA requirement on jobs even when existing workers in the role do not have one.

- **Adopt the civil service's skills-based hiring standards for federal contractors.** The President should direct the Administrator for Federal Procurement Policy to adopt the civil service's skills-based hiring standards for federal contractors and issue waivers from degree-based staffing requirements in existing contracts.

- **Prohibit the use of a BA requirement in job descriptions.** Congress should prohibit the inclusion of a BA requirement in job descriptions for all private sector employers, or the use of a BA requirement to screen applicants using algorithms, except where a BA from a particular type of institution or in a particular field is a bona fide requirement of the position.

Alternative View. While the federal government has a duty to promote economy and efficiency in federal hiring and contracting, and thus should base decisions on skills as opposed to degrees, it is not the federal government's role to determine whether private employers may or may not include degree requirements in job descriptions and in their hiring decisions. The inappropriate reverence given to degree requirements is a byproduct of the federal government's heavy subsidization of BA degrees. Phasing down federal subsidies would be a better way to eliminate barriers to jobs for individuals without BA degrees.

Federal Workforce Development Programs. Existing federally funded workforce development and training programs should be reassessed to ensure they are outcome-based and truly deliver value to taxpayers and job seekers.

As of 2019, the federal government spent approximately $17 billion annually on 43 federal employment and training programs administered across nine federal agencies, many of which overlap with at least one other program. Many of these programs track only inputs or individuals served, not outcomes or outputs, and do not swiftly identify bad-actor grantees. The federal government should identify underperforming programs and eliminate or redirect that funding to programs with strong outcome-based metrics.

- **Evaluate and streamline workforce development programs, ensuring evidence-based outcomes.** In its reauthorization of the Workforce Innovation and Opportunity Act (WIOA),[14] Congress should evaluate and streamline the existing workforce development programs to ensure there is no overlap or fragmentation between programs. Congress should also ensure strong evidence-based outcomes for each program and tie federal funding for those programs to the outcomes achieved.

- **Review employment and training programs to ensure outcome-based metrics.** DOL and other federal agencies with jurisdiction over employment and training programs should review their programs and utilize all available tools and authority to ensure these programs contain strong outcome-based metrics. To the extent that agencies have this authority, they should reevaluate funding for programs that do not meet those evidence-based and outcomes-based requirements. Finally, strong internal policies should be implemented to ensure bad-actor grantees are identified and sanctioned expeditiously.

Federal Unemployment Insurance Program. In the post-pandemic landscape, the federal government should restore the Unemployment Insurance (UI) program's purpose with a particular focus on reestablishing program integrity and accountability. The Coronavirus Aid, Relief, and Economic Security (CARES) Act[15]

unemployment programs were defrauded of hundreds of billions of dollars, including by state-sponsored hacking groups. Not all state agencies are yet through their backlogs of appeals and fraud cases; the recovery of lost funds has been minimal; and fraud has now spilled into the traditional UI programs. The CARES Act era drastically altered the entire UI ecosystem: The federal–state partnership shifted toward federal programs and funding, and the social insurance purpose of the program was disconnected as benefits were extended, expanded to more typically uncovered populations, and made exponentially larger.

- **Congress should enact bipartisan commonsense UI program reforms, including statutory authority for the Labor Office of Inspector General (OIG) to access all state UI records for the purposes of investigation and requiring state agencies to crossmatch applicants with the National Directory of New Hires.**

- **Congress should also develop a framework (through commission of a congressional report to serve as a blueprint) of technical standards on broader tech topics like usability, state agency cybersecurity postures, data taxonomy standardization, and/or identity verification standards.**

- **Congress should provide DOL with more reasonable enforcement tools for the UI system.** Currently, DOL can either send a strongly worded letter or revoke the entire Federal Unemployment Tax Act (FUTA)[16] tax credit, which would place an immediate 6 percent to 7 percent tax on all covered employers.

- **DOL should review all actual or planned procurements against the $2 billion (under the American Rescue Plan Act)[17] for UI fraud detection, accessibility, and equity investments.** These funds do not have appropriations timelines and have very minimal statutory descriptions of the intended purpose. DOL should also review and propose changes to improve state monitoring programs including developing evidence-based frameworks for evaluating the technical readiness and security postures of the state agencies; strengthen its relationship with the OIG and Government Accountability Office (GAO), and support continued development of fraud prosecution with DOJ, the Department of Homeland Security (DHS), and the financial services community; ensure administrative and IT funding is outcome-based; and gather and publish best practices from state officials, industry partners, and other vendors who deliver UI services.

WORKER VOICE AND COLLECTIVE BARGAINING

Non-Union Worker Voice and Representation. American workers lack a meaningful voice in today's workplace. Between 50 percent and 60 percent of workers have less influence than they want on critical workplaces issues beyond pay and benefits. Even managers are twice as likely to say their employees have *too little* influence rather than *too much*. But America's one-size-fits-all approach undermines worker representation. Federal labor law offers no alternatives to labor unions whose politicking and adversarial approach appeals to few, whereas most workers report that they prefer a more cooperative model run jointly with management that focuses solely on workplace issues. The next Administration should make new options available to workers and push Congress to pass labor reforms that create non-union "employee involvement organizations" as well as a mechanism for worker representation on corporate boards.

- **Congress should reintroduce and pass the Teamwork for Employees and Managers (TEAM) Act of 2022.**[18] The TEAM Act:

    1. Reforms the National Labor Relations Act's (NLRA) Section 8(a)(2) prohibition on formal worker–management cooperative organizations like works councils.

    2. Creates an "Employee Involvement Organization" (EIO) to facilitate voluntary cooperation on critical issues like working conditions, benefits, and productivity.

    3. Amends labor law to allow EIOs at large, publicly traded corporations to elect a non-voting, supervisory member of their company's board of directors.

Alternative View. While some conservatives lament that workers lack sufficient voice in today's workplace, others interpret the rise in independent and flexible work opportunities, significant expansion in family-friendly policies like paid family leave, and the decline in private sector unionization as indicators of workers' increasing competency and control. Another way to help expand workers' freedom and voices in traditional workplaces is by allowing them to choose who represents them in negotiations with their employer. The Worker's Choice Act[19] would accomplish this by ending exclusive representation so that unions in right-to-work states are no longer forced to represent workers who do not want to join them.

Union Transparency. Private-sector unions must file detailed financial information with DOL—on matters including union spending, income, loans, assets, membership information, and employee salary—but unions composed entirely

of state or local employees are exempt from this filing requirement. These disclosure requirements help workers and the public understand how union leaders are raising and spending union dues; they also can serve as a vital source of information that helps workers decide if the unions they are asked to join are good stewards of the funds they collect. DOL, under both George W. Bush and Donald Trump, tried rulemakings (known as the Intermediate Bodies Rule) that would require some government unions to file the same information that is required of private-sector unions.

Under President Trump, OLMS required unions to disclose involvement in trusts that they either own a majority stake in or control. In the past, union trust spending has been hidden, and it appears that trust assets have occasionally been corruptly spent for the benefit of private interests in union leadership—such as $30,000 spent on a private party, $37,500 spent on a Montblanc pen, condominiums for those in power, golf outings, and a Ferrari.[20] But the Biden DOL eliminated a transparency rule requiring the filing of the T-1 Trust Annual Report.

More generally, OLMS, which is charged with enforcing the law of union disclosure, has historically been underfunded when compared to other DOL agencies. This relative lack of funding has made ensuring disclosure more difficult.

- **Enact transparency rules.** The substance of the Intermediate Bodies Rule should pass into law, either through rulemaking or through legislation. The T-1 Trust Annual Report annual filing requirement should be restored.

- **Increase funding levels.** Congress should expand the funding of the Office of Labor-Management Standards.

Duty of Fair Representation. Unions have a duty of fair representation to their members, yet they too often abuse that duty to use their members' resources on left-wing culture-war issues that are unrelated, and in fact often harmful, to union members' own interests.

- **The NLRB should take enforcement or amicus action advancing the position that political conflicts of interest by union leadership can support claims for breach of the duty of fair representation in a manner analogous to financial conflicts of interest and analogous to breaches of the fiduciary duty of loyalty in other areas of law.**

Interpreting "Protected Concerted Activity." In an effort to prevent employers from retaliating against workers who express a desire to unionize, certain activities are deemed "protected concerted activity" (under §7 of the NLRA).

The NLRB has issued extreme interpretations of these activities, such as determining that a business's requiring its employees to be courteous to customers and one another is an unlawful infringement on the free speech rights implicit in the protected concerted activity protections in the NLRA.

- **Reverse unreasonable interpretations of "protected concerted activity."** The NLRB should return to the 2019 *Alstate Maintenance* interpretation of what does and does not constitute protected concerted activity, including listing eight instances of lawful actions by employers.

Injunctive Relief and Worker Organizing Activities. Within the confines of the more reasonable definition of protected concerted activity described above, the NLRB should increase its pursuit of reinstatement injunctions. Firing workers engaged in concerted activity has an immediate chilling effect on organizing, but remedies under the NLRA typically come only much later and amount only to backpay. In NLRA section 10(j), Congress empowered the NLRB to obtain temporary injunctions that immediately reinstate workers to their jobs in these circumstances. This provides a more meaningful remedy to the worker and creates a significant deterrent to unfair labor practices, because prompt reinstatement will tend to reinforce the legitimacy of the organizing effort. The NLRB overwhelmingly prevails when pursuing an injunction, succeeding 100 percent of the time in 2020 and 91 percent of the time in 2021.

- **Increase the use of 10(j) injunctive relief.** The NLRB should increase its use of 10(j) and should articulate guidelines for situations in which it intends to seek injunctive relief; the board should delegate authority to pursue such injunctions to the general counsel and the general counsel should establish a policy of considering them expeditiously in all retaliation cases identified by regional offices.

Dues-Funded Worker Centers. Under current law, both labor unions and unionized employers must file financial disclosures with DOL on an annual basis to ward off potential fraud and corruption of the sort that has been seen recently within the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). However, worker centers, which have grown in number and influence enormously over the past decade, are not required to file these disclosures.

- **Investigate worker centers and require financial disclosures.** DOL should investigate worker centers that look and act like unions and bring enforcement actions to require them to file the same financial disclosures.

Office of Labor-Management Standards Initiative. Currently, the Office of Labor-Management Standards (OLMS) may investigate potential employer malfeasance with regard to union funds in the absence of any complaint by a worker or union but may not do the same with regard to potential union malfeasance. If OLMS has evidence that a union may be violating the law based on information available to the agency (such as annual financial disclosure reports, information developed during an audit of a union's books and records, or information obtained from other government agencies) it should be permitted to open an investigation. It should have the same enforcement tools available for both employers and unions.

- **Revise investigation standards.** The Office of Labor-Management Standards should revise its investigation standards to authorize investigations without receiving a formal complaint.

Persuader Rule. During the Obama Administration, DOL created significant regulatory burdens for employers with respect to the advice that employers receive about union activity. As a general matter, employers who hire lawyers or other consultants to advise employees about union issues must file disclosure forms with the department, as must the lawyers and consultants themselves. Prior to the Obama Administration, advice provided solely to the employer required no disclosure. The Obama Administration attempted to eliminate this "advice exemption" with a directive known as the "persuader rule," which was successfully challenged in court. In 2018, the Trump Administration formally rescinded the persuader rule.

- **DOL should rescind the persuader rule once again should the Biden Administration revive it.**

Unionizing the Workplace: Card Check vs. Secret Ballot. Under the NLRA, instead of having a secret ballot election about the decision to unionize a workplace, a union may instead collect signed pro-union cards from a majority of the employees it wishes to represent and then ask the employer and National Labor Relations Board for voluntary union recognition. That request gives the employer the option to hold a secret-ballot election or to recognize the union without any such election. This "card check" procedure is likely to induce employees to provide their signed cards in ways that do not accurately reflect their true preferences—ranging from a desire not to offend the signature requestor to a wish to avoid intimidation and coercion to signing based on false information provided by union organizers. In short, the card check procedure sidesteps many aspects of democratic decision-making that free and fair elections conducted by secret ballot are supposed to accomplish. Notably, the general counsel of the National Labor Relations Board has recently proposed an esoteric legal theory that card-check

decision-making is required under the law, basing this theory on an old NLRB case, *Joy Silk*, even though the Supreme Court has repeatedly rejected mandatory card-check recognition.

- **Discard "card check."** Congress should discard "card check" as the basis of union recognition and mandate the secret ballot exclusively.

Contract Bar Rule. Although current labor law allows a union to establish itself at a workplace at more or less any time, the calendar for any attempt to decertify a union is considerably more constrained. If a union is recognized as a collective bargaining agent, then employees may not decertify it or substitute another union for it for at least one year under federal law (the "certification bar"). Similarly, when a union reaches a collective bargaining agreement with an employer, it is immune from a decertification election for up to three years (the "contract bar"). A typical consequence of these rules is that employees must often wait four years before they are allowed a chance at decertification. Employees then have only a 45-day window to file a decertification petition; if the employer and union sign a successor contract, then the contract bar comes into play once again—meaning employees with an interest in decertification must wait another three years.

- **Eliminate the contract bar rule.** NLRB should eliminate the contract bar rule so that employees with an interest in decertification have a reasonable chance to achieve their goal.

Tailoring National Employment Rules. National employment laws like the Fair Labor Standards Act (FLSA)[21] and the Occupational Safety and Health (OSH) Act[22] set out one-size-fits-all "floors" regulating the employment relationship. These substantive worker protections often do not mesh well with the procedural worker protections offered through the NLRA's collective bargaining process. Unions could play a powerful role in tailoring national employment rules to the needs of a particular workplace if, in unionized workplaces, national rules were treated as negotiable defaults rather than non-negotiable floors.

- **Congress should amend the NLRA to authorize collective bargaining to treat national employment laws and regulations as negotiable defaults.** For example, this reform would allow a union to bless a relaxed overtime trigger (e.g., 45 hours a week, or 80 hours over two weeks) in exchange for firm employer commitments on predictable scheduling.

Alternative Policy. While some conservatives (including the author of this chapter) believe that it would be a mistake to antagonize unions' core interests, others

argue that the next Administration should end Project Labor Agreement requirements and repeal the Davis–Bacon Act. And while some conservatives have chosen not to address massive federal subsidies for unionized labor, others believe that current laws and regulations that pick winners and losers to the detriment of the majority of construction workers and to all taxpayers should not be ignored.

Project Labor Agreements (PLAs) are short-term collective bargaining agreements that apply to construction projects. There are a few reasons that construction projects may benefit from a PLA, and there are many reasons that even when actively encouraged to do so public construction projects have declined to use PLAs. Among the consequences: The majority of construction firms and construction workers are not unionized and their temporary forced unionization results in large-scale wage theft; construction companies are significantly less likely to bid on projects with PLAs; and PLAs consistently drive up construction costs by 10 percent to 30 percent.

The Davis–Bacon Act[23] requires federally financed construction projects to pay "prevailing wages." In theory, these wages should reflect going market rates for construction labor in the relevant area. However, both the Government Accountability Office and the Department of Labor's Inspector General have repeatedly criticized the Labor Department for using self-selected, statistically unrepresentative samples to calculate the prevailing-wage rates that drive up the cost of federal construction by about 10 percent. The Davis–Bacon Act redistributes wealth from hardworking Americans to those that benefit from government-funded construction projects. Repealing the Davis–Bacon Act would increase worker freedom and end a longstanding effective tax on American families.

- **End PLA requirements.** Agencies should end all mandatory Project Labor Agreement requirements and base federal procurement decisions on the contractors that can deliver the best product at the lowest cost.

- **Repeal Davis–Bacon.** Congress should enact the Davis–Bacon Repeal Act and allow markets to determine market wages.

THE STATES

Worker-led Benefits Experimentation. Workers depend on unemployment benefits to navigate inevitable market frictions and seek new employment opportunities. But existing unemployment insurance (UI) is bureaucratic, ineffective, and unaccountable. The outdated system's myriad failures during the COVID-19 pandemic highlighted the need for innovations that respond to recipients' needs.

The most promising avenue for innovation is to involve workers and private-sector organizations more directly, freed from unnecessary bureaucratic strictures. Americans take for granted that unemployment benefits must be administered by

government agencies, but other Western market democracies feature effective and popular benefits administered by non-public worker organizations.

The next conservative Administration should encourage UI innovation by capitalizing on a key feature of the system and principle of conservative policymaking: federalism. State governments already administer unemployment benefits and have broad discretion over their programs. Existing statutory language in the Social Security Act[24] does not prohibit non-public organizations from administering the program, nor does it specifically authorize states to do so. Further, the Administration can replicate state-level experiments in welfare programs and empower state officials to adapt UI to local conditions and needs.

- **Approve non-public worker organizations as UI administrators.** DOL should approve, pursuant to § 303(a)(2) of the Social Security Act, non-public worker organizations as administrators.

- **Offer waivers for suitable alternatives.** DOL should offer waivers from the standard requirements imposed on unemployment compensation by § 303(a) and § 303(d) of the Social Security Act to states that propose suitable alternatives.

- **Require organizations to comply with restrictions on political spending.** DOL should establish as a precondition for receiving any public funds a requirement that an organization comply with restrictions on political spending as applied to 501(c)(3) charitable organizations.

Labor Law. The federal laws governing labor-management relations have barely changed in generations, and reforms on the federal level have been almost impossible to get through Congress. To modernize labor law, the Congress should:

- **Pass legislation allowing waivers for states and local governments.** To encourage experimentation and reform efforts at the state and local levels, Congress should pass legislation allowing waivers from federal labor laws like the NLRA and FLSA under certain conditions. State and local governments seeking waivers would be required to demonstrate that their reforms would accomplish the purpose of the underlying law, and not take away any current rights held by workers or employers. In addition, waivers would be limited to a five-year period, after which time they could be modified, canceled, or renewed.

Excessive Occupational Regulation. Excessive occupational regulation—most typically encountered as occupational licensing—creates underemployment

and wasted resources, and artificially increases consumer prices. It is a significant problem that is difficult to address at the federal level.

- **Congress should ensure that interstate compacts for occupational license recognition that are federally funded do not require new or additional qualifications (that is, qualifications that do not originate from state governments themselves) for licensed professionals to participate.**

- **Congress should ensure that well-qualified licensees are not locked out of the job market by restrictive government programs funded by the federal government.** (For instance, medical doctors must complete residency training to practice, and because Medicare provides funding for significantly fewer residencies than there are doctors, sizable numbers of MDs are locked out of the job market every year.)

Wagner–Peyser Staffing Flexibility. State agencies that administer unemployment benefits and workforce development programs should be able to hire the best people to do the job and should not be required to use state employees if a contractor can do the job better. Further, the federal government should not force a state to use non-union labor or union labor for these positions.

- **DOL should repromulgate the Trump-era staffing flexibility rule, and Congress should codify it.**

WORKER RETIREMENT SAVINGS, ESG, AND PENSION REFORMS

- **Remove ESG considerations from ERISA.** Environmental, Social, Governance (ESG) investing is a relatively recent strategy promoted by large asset managers that focuses not only on a company's bottom line, but also on the company's compliance with liberal political views on climate change, racial quotas, abortion, and other issues. The ESG movement has focused especially on reducing greenhouse gas emissions. For example, ESG proponents advocate for divestment from oil and gas companies or the exercise of investor influence to reduce oil and gas production.

  ESG considerations unrelated to investor risks and returns necessarily sacrifice trust law's traditional sole focus on investment returns for collateral interests. And while individual investors may prefer to invest in "green" companies, "woke" companies, or companies with greater board diversity, and may even be willing to sacrifice some financial gains to do

so, the question relevant to DOL is whether, and under what conditions, fiduciaries should be permitted to follow this path as well.

While Americans are free to invest their own savings however they wish, in ERISA, Congress imposed strict duties on employer-sponsored worker retirement plans as a prophylactic protection of workers' retirement security in general. Recognizing the unique status of employer-managed retirement savings, in ERISA, Congress required that fiduciaries exclusively seek the best interests of plan beneficiaries. Because ESG investing necessarily puts other considerations before the interests of the beneficiary, ESG investing by plan managers is an inappropriate strategy under ERISA.

- **DOL should prohibit investing in ERISA plans on the basis of any factors that are unrelated to investor risks and returns.**

- **DOL should return to the Trump Administration's approach of permitting only the consideration of pecuniary factors in ERISA.** However, this approach should not preclude the consideration of legitimate non-ESG factors, such as corporate governance, supply chain investment in America, or family-supporting jobs.

- **DOL should consider taking enforcement and/or regulatory action to subject investment in China to greater scrutiny under ERISA.** Many large retirement and pension plans remain invested in China despite its lack of compliance with U.S. accounting standards and state control over all aspects of private capital.

Alternative View. Some conservatives believe that ERISA plan investments should be made solely on a pecuniary basis and the consideration of any non-pecuniary factor, ESG or otherwise, should be prohibited. Additionally, other conservatives believe that even though ESG investing is often not a sound financial strategy, it is not wrong for retirement plans to offer ESG investment options so long as individuals explicitly acknowledge and choose to pursue investment options that do not exclusively maximize pecuniary gains.

Thrift Savings Plan. The Thrift Savings Plan (TSP) is the retirement savings benefit plan for most federal employees and many former employees. The TSP is managed by the Federal Retirement Thrift Investment Board (FRTIB). At over $800 billion in assets under management, the TSP is one of the largest retirement plans in the world.

- **DOL should reverse efforts to politicize the TSP by removing "mutual fund" windows that encourage ESG, and should clarify the fiduciary duties of the TSP.** Recent efforts by congressional Democrats and the Biden Administration to politicize the TSP by offering selective "mutual fund" windows that encourage ESG should be reversed by DOL, and the fiduciary duties of the TSP should be clarified by the department to preclude ESG investments absent individual stock selection by the participant.

  The TSP is managed under contract by private-sector fund managers. Its current managers are BlackRock and State Street Global Advisers. Both of these managers have demonstrated a public commitment to use the funds they manage to advance ESG.

- **The federal government should follow the lead of multiple state governments in removing their pension funds from fund managers such as BlackRock and State Street Global Advisers, and contract with a competitive, private-sector manager that will comply with its fiduciary duties.**

- **DOL should also consider bringing enforcement actions against BlackRock and State Street Global Advisers for their violations of fiduciary duty while managing the TSP.**

- **Congress should enact legislation authorizing the FRTIB to exercise its independent business judgment in exercising the proxy votes for its holdings of the TSP and provide clear proxy voting guidelines for the FRTIB to follow.** The current proxy adviser market is dominated by two firms, Institutional Shareholder Services and Glass Lewis, which use heavily weighted ESG criteria in directing the proxy votes of pension plans. If feasible, the new legislation should also offer a streamlined process for other proxy advisers to compete for the TSP's business.

  As the principal retirement savings plan of America's servicemen and women, part of the FRTIB's fiduciary duties in managing the TSP is a duty not to invest in governments that are enemies of the United States. Yet the FRTIB has repeatedly approved the investment of TSP funds in Chinese military companies and state-owned enterprises. Under the Trump Administration, DOL ordered the FRTIB to cease investments in China. However, under the Biden Administration, the TSP has made available a wide range of investments in China.

- **DOL should exercise its oversight of the FRTIB to prohibit investments in China.**

- **Congress should enact legislation prohibiting investment of the TSP in China.**

PENSION REFORMS.

Public Pension Plan Disclosure. Residents of states that responsibly manage their public pension plans (pension plans for State and local government employees) should not be responsible for bailing out states that do not do so. Money is ultimately fungible, so federal aid to States can effectively be used to free up other State funds for pension contributions. Although the federal government does not impose funding rules on public pension plans, these plans should be required to disclose the fair market value of plan assets and liabilities (using the Treasury yield curve as the discount rate) on an annual basis. In the aggregate, these plans were underfunded on a market basis by $6.501 trillion as of Fiscal Year (FY) 2021, even though the plans reported underfunding of only $1.076 trillion using overly optimistic assumptions.

- **Disclose the fair market value of plan assets and liabilities.** Congress should require public pension funds to disclose the fair market value of plan assets and liabilities (using the Treasury yield curve as the discount rate) on an annual basis.

Multiemployer Plans. At the request of multiemployer union pension plans, the government has given such plans much more lenient rules and discretion over funding than it has given to single-employer plans. Multiemployer plans have been severely mismanaged, and the plans have abused the discretion and deference given them by federal law and enforcement agencies to make promises that they cannot keep. As a result, these plans are generally severely underfunded, with $757 billion in aggregate underfunding, and a funding level of just 42 percent. The Biden Administration has provided a massive taxpayer bailout to some of these plans, but without any needed reforms. Even worse, it gave out funds in excess of what the law allows.

- **Congress should reform multiemployer pensions to give participants in these plans the same protections as those in single-employer plans.** Liabilities should be measured similarly to single-employer plans. Workers should be able to earn benefits at any employer in the plan, but liabilities should be divided amongst employers, instead of the current illusory joint and several liability under which no one is ultimately responsible for making up underfunding. Troubled plans should be prohibited from

making new pension promises. More timely and detailed reporting should be imposed.

Pension Benefit Guaranty Corporation. The Pension Benefit Guaranty Corporation (PBGC) insures benefits for private sector pension plans, with separate single-employer and multiemployer insurance programs.

- **The PBGC's annual report must be submitted on time, and with timely data that uses fair-market value principles to calculate the PBGC's finances.** The PBGC has been submitting portions of statutorily required annual reports many months late and using out-of-date data. And PBGC's data on plans is almost five years old. These problematic practices make it difficult for Congress to become aware of serious problems in the insurance programs, which received a bailout of over $85 billion in the 2021 American Rescue Plan Act.

  The PBGC should use existing statutory authority to protect workers, retirees, employers, and taxpayers by closely monitoring and taking appropriate remedial action with regard to badly run and underfunded multiemployer union pension plans, including termination where appropriate. The PBGC's refusal to use such authority helped cause its multiemployer program deficit to go from less than $500 million in 2008 to over $65 billion in 2017.

- **Congress should increase the variable rate premium on underfunding and eliminate the per-participant cap in order to appropriately take into account risk and limit the degree to which well-funded pension plans must subsidize underfunded plans.** Reforms should proportionately reduce the fixed per-participant premium to ease the burden on well-funded plans and also increase premiums on multiemployer plans to match single-employer plans.

Improving Access to Employee Stock Ownership Plans. Employee Stock Ownership Plans (ESOPs) are ERISA-covered employee retirement savings plans that allow employees to receive compensation in the form of equity in their employer business. These arrangements enable employees to formally participate as investors in how their employers' businesses are run. And they also align employer–employee incentives by giving employees a greater financial stake in the success of their employers. With over half of small businesses owned by business owners over the age of 55, ESOPs also create advantageous succession opportunities that support the continuity of local businesses and regional economic

development. Finally, ESOPs can enable greater investment returns for employees. However, ESOPs have to date lacked clear rules under ERISA that recognize their unique structure and benefits, and this opacity can serve as a barrier to employers considering adopting ESOPs.

- **Provide clear regulations for ESOP valuation and fiduciary conduct.** DOL should make it easier for employers to offer ESOPs by providing clear regulations for ESOP valuation and fiduciary conduct that encourages the participation of employee beneficiaries in corporate governance, while recognizing the importance of financial diversification for retirement security.

Alternative View. Conservatives believe that it is important for American families to have control over their savings and to be able to hold diversified assets. While ESOPs can be a beneficial part of a worker's and family's savings, some conservatives believe that the government should not favor one form of investment over another or make it harder for families to have a diversified investment portfolio.

PUTTING AMERICAN WORKERS FIRST

A labor agenda focused on the strength of American families must put American workers first. As the family necessarily puts the interests of its members first, so too the United States must put the interests of American workers first.

Immigration. The H-2A visa, meant to allow temporary agricultural workers into the United States, also suffers frequent employer abuse. The low cost of H-2A workers undercuts American workers in agricultural employment. The H-2A program is not subject to any statutory numerical cap and has been expanding in recent years, surpassing 200,000 visa issuances for the first time in 2019.

- **Cap and phase down the H-2A visa program.** Congress should immediately cap this program at its current levels and establish a schedule for its gradual and predictable phasedown over the subsequent 10 to 20 years, producing the necessary incentives for the industry to invest in raising productivity, including through capital investment in agricultural equipment, and increasing employment for Americans in the agricultural sector.

- **Encourage the establishment of an industry consortium and match funding.** Congress should also encourage the establishment of an industry consortium of agricultural equipment producers and other automation and robotics firms interested in entering the sector and match funding invested by the industry, with intellectual property developed within the consortium freely available to all participants.

Alternative View. Some conservatives believe that temporary worker programs help to fill jobs that Americans will not fill, prevent illegal immigration by giving farmers and others who hire low-skilled labor access to workers, and keep down the prices of food and other products and services produced by the temporary workers. Some credibly argue that, absent the H-2A program, many farmers would have to drastically increase wages, raising the price of food for all Americans, and that even such wage increases may not be sufficient to attract enough temporary American workers to complete the necessary farm tasks to get food products to market since those jobs are, by their nature, seasonal. Those who share this view argue that any plan to phase out the program should weigh the program's current costs (relatively low) and the program's current benefits (makes American farming more profitable and sustainable while keeping down food costs).

- **Phase out the H-2B visa program.** The H-2B visa, for nonagricultural seasonal workers, suffers from many of the same harms and abuses as H-2A, albeit of lesser scope because of its cap and distribution across many sectors. Congress should immediately cap this program at its current levels and establish a schedule for its gradual and predictable phasedown over no more than 10 years.

Alternative View. As with the H-2A program, some conservatives see the H-2B program as a valuable program that provides low-cost temporary workers in jobs that American companies, by and large, cannot find enough American workers to fill (e.g., tourist season childcare providers at ski resorts, swimming instructors at summer camps, housekeepers and groundskeepers at amusement parks, and extra summer cooks at restaurants that serve national park patrons).These seasonal jobs are less desirable to Americans who predominantly prefer year-round work. Labor shortages after the pandemic support this belief. Absent the H-2B program, many of these seasonal businesses would be forced to cut their hours or even close altogether. Any plan to phase out the program should weigh the program's current costs (relatively low) and the program's current benefits (makes seasonal business more feasible).

Hire American Requirements. When government purchases goods or services, if at all possible, not only should the company be an American company and the products be manufactured in America, but the companies should also be encouraged to hire American workers. Likewise, private employers should be free to prefer our own countrymen.

- **Congress should mandate that all new federal contracts require at least 70 percent of the contractor's employees to be U.S. citizens, with the percentage increasing to at least 95 percent over a 10-year period.**

- **Congress must amend the law so that employers can again have the freedom to make hiring Americans a priority.** Despite the significant advantages that preferring citizens over (work-authorized) aliens in hiring would provide to American workers, businesses, and the country at large, such a practice has been illegal since 1986.[25] This makes no sense.

Alternative View Some conservatives believe that the government has a duty to limit its spending in order to limit how much it takes from American families. This means that when the government spends money, it must find the most economical and effective way to do so. Excessive government spending will be borne by American workers and families through reduced incomes and purchasing power. There may be good reasons to require a certain percentage of American workers on federal contracts, but those decisions should be based on economy and efficiency as opposed to arbitrary quotas.

Visa Fraud. American businesses that commit visa fraud and hire illegal immigrants should not be the beneficiaries of federal spending. But a 2020 report by the Department of Labor's Office of Inspector General (OIG) examined the department's process for excluding employers who commit visa fraud and abuse from federal contracts and found much to be desired.

- **To protect the American workforce from unscrupulous immigration lawyers, employers, and labor brokers, the department must follow the recommendations of the OIG and institute more robust investigations for suspected visa fraud and speedier debarments for those found guilty.**

INTERNATIONAL LABOR POLICY

Leveling the International Playing Field for Workers. As recent decades of intense import competition and offshoring have made clear, American workers suffer when the U.S. opens its markets to foreign nations' minimal labor standards and exploitative conditions. While federal law already prohibits the importation of goods produced with forced labor, the prohibitions are toothless without effective means of enforcement and cover only the most basic of workers' rights. The Trump Administration and its United States Trade Representative (USTR) took unprecedented steps to redress the issue for workers. The U.S.–Mexico–Canada Agreement (USMCA) contained the strongest and most far-reaching labor provisions of any free trade agreement (FTA), with protections and commitments to reduce labor abuses and raise wages. It also established new modes of enforcement.

For future FTAs, the USTR should replicate the labor provisions of USMCA, especially the provisions to:

- **Eliminate all forms of forced or compulsory labor.**

- **Protect workers' rights to organize and participate voluntarily in a union without employer interference or discrimination.**

- **Create a rapid-response mechanism to provide for an independent panel investigation of denial of labor rights at covered facilities.**

- **Shift the burden of proof by presuming that an alleged violation affects trade and investment, unless otherwise demonstrated.**

For future authorizations of Trade Promotion Authority (TPA), the President should urge Congress to:

- **Create mechanisms for supply-chain transparency.**

- **Institute a general prohibition on forced labor conditions.**

Investigate Foreign Labor Violations That Undermine American Workers. The United States' embrace of globalization has exposed American workers to unfair competition from nations with cheap, abundant, and often exploited labor. American workers have, as a consequence, seen their earning power erode. While negotiating stronger trade agreements with robust labor provisions should be the primary tool with which to regulate international labor competition, the federal government can also take steps to identify the worst labor abuses and rule breakers. DOL's Bureau of International Labor Affairs (ILAB) plays a critical role in monitoring and enforcing the labor provisions of U.S. trade agreements and trade preference programs as well as investigating child labor and human trafficking violations.

- **The next Administration should focus ILAB investigations on foreign labor violations that do the most to damage American workers' earning power, specifically regimes that engage in child and forced labor, fail to protect workers' organizing rights, and permit hazardous or otherwise exploitative working conditions.**

Alternative/Additional View. Conservatives share a belief in protecting and promoting American workers and their families and orienting international policies with Americans' interests first. Some conservatives believe that the best way to put America first is by making America more attractive. In addition to restrictions imposed on other countries, removing existing barriers to American manufacturing, employment, and commerce can help American workers, entrepreneurs, and families.

ORGANIZATIONAL AGENDA

Budget

- **Reduce the agencies' budgets to the low end of the historical average. The Trump Administration's FY 2020 request, $10.9 billion, would provide a workable target for spending reductions for DOL, for example.**

- **Spending reductions should occur primarily in the Employment and Training Administration (ETA).**

- **Focus health and safety inspections on egregious offenders, as other inspections are often abused and usurp state and local government prerogatives.**

Personnel

- **Maximize hiring of political appointees.** At its best, the Trump Administration Department of Labor worked with up to 150 political appointees. That is still a tiny percentage of the department. The number of political appointees should be maximized in order to improve the political accountability of the department.

- **Appoint new EEOC and NLRB general counsels on Day One.** The Biden Administration broke significant precedent by firing the EEOC and NLRB general counsels despite their term appointments. The next Administration should do the same and expand on the Biden Administration's new precedent by refusing to acknowledge terms in other offices, where applicable, and installing acting or full new officers immediately.

- **Implement a hiring freeze for career officials.** A hiring freeze imposes financial discipline on agencies' personnel costs and reduces agency bloat.

Office of Compliance Initiatives

- **DOL should fully staff the Office of Compliance Initiatives (OCI), which was reopened by the Trump Administration after the Obama Administration closed its predecessor down.** OCI educates employers and workers on their rights, responsibilities, and available recourse under the many statutes, rules, and regulations administered by DOL. Most businesses want to follow the law and OCI exists to make knowing the rules easier, which leads to increased compliance.

Improve Visa-Related Labor-Market Monitoring

DOL's Office of Foreign Labor Certification plays an important role in the approval of H-visa applications, but it is currently housed in the Employment and Training Administration, which is DOL's primary grant-making division.

- **OFLC should be moved out of ETA and made directly accountable to the Secretary with a politically accountable Director.**

CONCLUSION

The good of the American family is at the heart of conservative labor policy recommendations. The longstanding tradition of a strong work ethic in American culture must be encouraged and strengthened by policies that promote family-sustaining jobs. By eliminating the policies promoted by the DEI agenda, promoting pro-life policies that support family life, expanding available apprenticeship programs including by encouraging the role of religious organizations in apprenticeships, making family-sustaining jobs accessible, simplifying employment requirements, and allowing employers to prefer American citizens when making hiring decisions, among the other policy recommendations discussed above, we can begin to secure a future in which the American worker, and by extension the American family, can thrive and prosper.

AUTHOR'S NOTE: Many contributors, listed at the front of this volume, deserve credit for this work, but Oren Cass, Rachel Greszler, Rachel Morrison, Caleb Orr, and Jonathan Wolfson deserve special mention. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

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DEPARTMENT OF TRANSPORTATION

Diana Furchtgott-Roth

INTRODUCTION

America needs transportation that is more abundant and affordable as well as dignified, accessible, and family friendly. Transportation plays a vital role in the prosperity and flourishing of the United States. Americans use trucks, tankers, and trains to keep our supply chains running and cars, transit, and planes to go where we want to go.

Two hundred and forty years ago, Adam Smith recognized that connections were a bedrock of society because they stimulate specialization, innovation, and capital investment. In the following decades, America's growth was made possible by transportation—first ports and transatlantic shipping, then roads, canals, and eventually railroads pushing westward to create the nation we call home. Access to transportation is part of what made our country great.

The U.S. Department of Transportation (DOT), with a requested fiscal year (FY) 2023 budget of $142 billion,[1] was originally intended simply to provide a policy framework for transportation safety, rulemaking, and regulation. However, it has evolved to believe that its role is "to deliver the world's leading transportation system"[2]—that is, to select individual projects and allocate taxpayer funds in the actual planning, developing, and building of transportation assets. Such a role is held more appropriately by transportation asset owners: primarily states, municipalities, and the private sector.

In addition to providing a safety and regulatory framework through its 11 subcomponents, known as modes, the department has become a de facto grantmaking and lending organization. DOT provides approximately $50 billion in discretionary

and formula grants, known as obligations, annually in areas ranging from transit systems to road construction to universities and has lent or subsidized more than $60 billion since the Transportation Infrastructure Finance and Innovation Act (TIFIA) program,[3] now managed by the Build America Bureau, was created in 1998. This evolved role as a major, and often primary, funding and financing source is far from the department's original policy framework. It also removes incentives for state and local officials to ensure that investments are worthwhile, because federal money removes the need to get public buy-in to build and maintain infrastructure projects as funding becomes "someone else's money."

Despite the department's tremendous resources, congressional mandates and funding priorities have made it difficult for DOT to focus on the pressing transportation challenges that most directly affect average Americans, such as the high cost of personal automobiles, especially in an era of high inflation; unpredictable and expensive commercial shipping by rail, air, and sea; and infrastructure spending that does not match the types of transportation that most Americans prefer. Transforming the department to address the varied needs of all Americans more effectively remains a central challenge.

DOT is particularly difficult to manage because its 11 major components—nine modal administrations, the Office of the Secretary, and the Office of the Inspector General—all have their own sets of personnel including administrators, deputy administrators, chiefs of staff, and general counsels. Most grants flow through the modes, such as the Federal Highway Administration, Federal Transit Administration, and Federal Aviation Administration.

The Office of the Secretary contains its own grantmaking operation that funds research and some special grants, as well as a major lending operation, the Build America Bureau, that functions as an infrastructure bank. The Office of the Secretary has department-wide offices for such functions as Budget and Financial Management, the General Counsel, Policy, the Office of Research and Technology, Government Affairs, Administration, the Office of the Chief Information Officer, Small and Disadvantaged Business Utilization, Public Affairs, Drug and Alcohol Policy and Compliance, and Civil Rights. The modal administrations include the:

- Federal Aviation Administration (FAA);
- Federal Highway Administration (FHWA);
- Federal Railroad Administration (FRA);
- National Highway Traffic Safety Administration (NHTSA);
- Federal Transit Administration (FTA);

- Great Lakes St. Lawrence Seaway Development Corporation (GLS);
- Maritime Administration (MARAD);
- Federal Motor Carrier Safety Administration (FMCSA); and
- Pipeline and Hazardous Materials Safety Administration (PHMSA).

DOT's fundamental problem is that instead of being able to focus on providing Americans with affordable and abundant transportation, it has become saddled with congressional requirements that reduce the department to a de facto grant-making organization. Yet there is little need for much of this grantmaking, for two reasons:

- New technology enables private companies to charge for transportation in many areas, which could transform how innovation is financed. It is vital to consider the role of user fees and other pricing innovations with regard to transportation infrastructure. Airport landing fees for aircraft, toll charges on roads and bridges, and per-gallon taxes on gasoline and diesel fuel are all examples of user charges that affect the decisions of transportation system users. These changes could shift our nation's transportation away from being a top–down system that is misaligned with the needs of so many Americans. Increasing private-sector financing could revolutionize travel and increase everyday mobility to its greatest potential in a way that Americans prefer. Doing so would keep transportation decisions out of the hands of bureaucrats in Washington, D.C., who are far removed from local problems and preferences.

- If funding must be federal, it would be more efficient for the U.S. Congress to send transportation grants to each of the 50 states and allow each state to purchase the transportation services that it thinks are best. Such an approach would enable states to prioritize different types of transportation according to the needs of their citizens. States that rely more on automotive transportation, for example, could use their funding to meet those needs.

Meanwhile, many Americans continue to confront serious challenges with their day-to-day transportation, including costs that have increased dramatically in recent years. DOT in its current form is insufficiently equipped to address those problems. DOT's discretionary grant-making processes should be abolished, and funding should be focused on formulaic distributions to the states, which know best their transportation needs and are incentivized to think of the

long-term maintenance costs. At a bare minimum, the number of grants should be consolidated.

DOT would also reduce unnecessary burdens by returning to the Trump Administration's "rule on rules" approach to regulations, implemented in late 2019 as RIN 2105-AE84.[4] This rule strengthened the Administration's effort to remove outdated regulations, find cost-saving reforms, and clarify that guidance documents are in fact guidance rather than mandatory impositions. The Biden Administration unwisely moved away from this reform, and the next Administration should revive it without delay.

BUILD AMERICA BUREAU

The Build America Bureau (BAB) resides within the Office of the Secretary and describes itself as "responsible for driving transportation infrastructure development projects in the United States."[5] This lofty-sounding goal in practice means that the Bureau serves as the point of contact for distributing funds for transportation projects in the form of subsidized 30-year loans. For higher-quality projects and in certain circumstances, these government loans may disintermediate the private sector from providing similar financing, albeit at higher costs.

At certain times in the economic cycle, and for many lower-quality projects with more dubious economic return, similar loans from the private sector are simply not available. Should the BAB continue to exist and potentially disintermediate the private financing sector, it must maintain underwriting discipline and continue best practices of requiring rigorous financial modeling and cushion for repayment of loans in a variety of economic scenarios. In addition:

- The BAB should ensure that these loans do not become grants in another form by maintaining the requirement that all project borrowers be rated at least investment grade by the major ratings agencies and that project sponsors remain liable to ensure that all financing is repaid, even in periods of financial stress and economic downturns.

- Project sponsors should be required to show that projects have positive economic value to taxpayers, and sponsors should guarantee that all federal financing will be repaid through properly structured loan terms, including a minimum equity commitment from all project sponsors.

- All projects should also be required to show repayment ability in various interest rate environments, and the BAB should ensure that long-term loans are structured appropriately with regard to the fixing of interest rates and hedging of interest rate risk on the part of the borrowers to avoid financial stress or default driven solely by rising interest rates.

- Policymakers should maintain awareness and promote transparency regarding the continued existence of this loan program and whether private financiers are being disintermediated by the subsidized BAB lending that the private sector simply cannot match.

- A cost-benefit analysis of the federal government's potential replacement and disintermediation of the private financing sector regarding infrastructure loans, which is not currently performed, should be conducted on a regular basis.

PUBLIC–PRIVATE PARTNERSHIPS

Much infrastructure could be funded through public–private partnerships (P3s), a procurement method that uses private financing to construct infrastructure. In exchange for providing the financing, the private partner typically retains the right to operate the asset under requirements specified by the government in a contract called a concession agreement. In addition, the private partner is given the right either to collect fees from the users of the asset or to receive a periodic payment from the government conditioned on the asset's availability: If a highway is not open to traffic when it should be, for example, the government's payment to the private concessionaire is reduced.

The best practice for a government that is interested in using a P3 to deliver a project is for the government first to perform a value-for-money study, which compares the costs and benefits of procuring the asset under a typical procurement against the costs and benefits of utilizing a P3. Since private equity is involved, the financing costs for P3s are higher, but they also are frequently more than offset by the private sector's ability to generate efficiencies and cost savings in the design, construction, maintenance, and operation of the asset. If the value-for-money study finds that the efficiencies of a P3 and the value of risk shifted to the private sector exceed the additional financing costs, then utilizing a P3 is good public policy because Americans have better infrastructure at a lower cost.

As well as providing better transportation facilities for Americans, P3s offer a number of benefits to governments. Specifically, they:

- Provide access to some of the world's best talent with vast experience in delivering infrastructure,

- Create incentives for innovation and creativity,

- Shift unique project risks to companies that are familiar with those risks, and

- Allow designers, contractors, and maintenance teams to work together through the delivery of the process to focus on lifecycle costs as opposed to just initial design and construction costs.

It should be noted that project funding and P3s are not synonymous. Policymakers and government leaders frequently mistake the financing that P3s provide for funding. A P3 allows the government to obtain equity from the private sector, but that equity has to be paid back with interest. Like a loan, a P3 can be used to accelerate revenues and provide needed capital to help pay the upfront costs of a project, but also like a loan, the private P3 investors must be paid back for investors to realize a financial return.

Some mistakenly think that using a P3 would allow a road or bridge to be delivered without increases in tolls or taxes. It is important to remember that all funding for governmental infrastructure comes from either taxes or user fees. P3 financing can be used to make those funding sources more efficient, but it cannot replace the need for taxes or user fees to provide the funding for the project.

In addition, a poorly managed P3 procurement process (the process government uses to identify the best private P3 partner) can result in excessive consultant costs and years-long delays in delivery. While P3s can offer efficiencies in delivering the project, the P3 procurement process itself can be significantly longer and more expensive than traditional procurement processes.

Finally, and possibly most important, a P3 gives a private party the ability to collect fees or payments over decades (a period well beyond the length of the careers of the political appointees who sign contracts with private parties). Thus, P3s create an opportunity for current governmental leaders to obtain a higher upfront payment from the private party in exchange for greater user fees paid by future generations who will use the asset. In other words, a governmental CEO (governor, mayor, head of an authority) can use a P3 to impose unnecessarily high costs on users decades in the future in exchange for upfront cash. It is important that contracts be transparent in order to minimize this possibility.

A P3's greatest public value is realized when the procurement model is used for a project that is unusually risky or a type of project with which the government has limited experience such as a tunnel or light rail line. P3s are an excellent tool for transferring risk from the public sector to the private sector and can create considerable value for the taxpaying public. However, a high degree of expertise is required to ensure that the risk transfer warrants the higher financing and procurement costs that P3s impose.

EMERGING TECHNOLOGIES

As private companies develop a future of new, emerging technologies, one role for DOT is driving clarity in the government's role and setting standards for safety,

security, and privacy without hampering innovation. DOT can oversee the testing and deployment of a wide variety of new technologies, allowing communities and individuals to choose what best fits their needs. It is the role of the private sector, not the government, to pick winners and losers in technology development. If a technology underperforms, the private sector should be liable, not the government.

The department should ensure a tech-neutral approach to addressing any emerging transportation technology while keeping safety as the number one priority. As part of this, it should work to facilitate the safe and full integration of automated vehicles into the national transportation system. Over time, these advanced technologies can save lives, transform personal mobility, and provide additional transportation opportunities—including for people with disabilities, aging populations, and communities where car ownership is expensive or impractical.

NHTSA's and FMCSA's current regulations were written before the advent of automated vehicles and driving systems. Both operating administrations have issued Advance Notices of Proposed Rulemakings (ANPRMs) that begin the process of updating their regulations to reflect this new technology. However, these regulations have stalled under the Biden Administration, which has chosen to use the department's tools to get people to take transit and drive electric vehicles instead of helping people to choose the transportation options that suit them best.

- NHTSA should work to remove regulatory barriers by focusing on updating vehicle standards as well as publishing performance-based rules for the operations of automated vehicles (AVs).

- FMCSA should work to clarify the regulations to align with DOT's AV 3.0 guidance, which would allow the drivers to be safely removed from the operations of a commercial motor vehicle.

From a nonregulatory point of view, DOT has pivoted from a successful focus on the voluntary sharing of data to improve safety outcomes to adoption of a more compulsory and antagonistic approach to mandating data collection and publication through a Standing General Order related to automated vehicles. This needs to be reversed.

Many of these new and innovative technologies rely on wireless communications that depend on the availability and purchase of radio frequency spectrum, a trend that is consistent with what we see in connectivity in our everyday lives. There is a role for DOT in ensuring that in the fight over spectrum, transportation gets its fair share.

For technologies to work in transportation, and in particular to work for transportation safety, they have to meet the unique needs of a transportation

environment. They need to account for rapidly moving and out-of-line-of-sight vehicles as well as pedestrians, bicyclists, and other road users. They should account for the potential for radio interference, and they should address security.

This is why in 1999, in response to a request from Congress, the Federal Communications Commission allocated the 5.9 GHz band of spectrum to traffic safety and intelligent transportation systems (ITS). In 2020, the FCC took away 45 MHz of the 75 MHz it had added, leaving only 30 MHz for transportation safety and ITS. DOT needs to represent the transportation community and make the case for needed spectrum to the public and Congress.

CORPORATE AVERAGE FUEL ECONOMY (CAFE) STANDARDS

One reason for the high numbers of injuries on American roadways is that national fuel economy standards raise the price of cars, disincentivizing people from purchasing newer, safer vehicles.

Congress requires the Secretary of Transportation to set national fuel economy standards for new motor vehicles sold in the United States. This mandate was established in the Energy Policy and Conservation Act of 1975 (EPCA),[6] a law passed in the wake of the Arab oil embargo to promote greater energy efficiency and lessen the national security threat of U.S. dependence on foreign oil. The statute directs DOT to prescribe the "maximum feasible" mileage requirements for different categories of internal-combustion engine (ICE) automobiles for each model year. The standards must be achievable using available ICE technologies running on gasoline, diesel fuel, or similar combustible fuels and must not be set so high as to prevent automakers from profitably producing new vehicles at sufficient volume to meet consumer demand.

Congress recognized that the ICE-powered automobile has been instrumental to advancing the mobility and prosperity of the American people and that the domestic mass production of new ICE vehicles generates millions of jobs and remains critical to the overall health of the U.S. economy and the strength of the nation's industrial base. Accordingly, Congress took care to ensure that the mileage requirements issued by DOT would not undermine the vitality of America's auto industry or interfere with the market economics that drives consumer demand for new vehicles.

This rulemaking authority, which has been delegated by the Secretary to the National Highway Traffic Safety Administration, is exclusive to DOT. EPCA expressly preempts states from adopting or enforcing any different requirement "related to fuel economy standards" for new motor vehicles. While the statute instructs DOT to consult with the Department of Energy and the Environmental Protection Agency (EPA) in formulating its standards, no other federal agency, including EPA, has clear authority to set fuel economy requirements in place of NHTSA. The Clean Air Act[7] gives EPA general authority to establish emissions

limits for new motor vehicles for air pollutants that are found to pose a danger to humans. However, there is no reason to believe Congress ever contemplated that EPA's authority to address automotive air pollution might be used to displace or supersede NHTSA's fuel economy mandate under EPCA.

Congress chose to assign the power to set fuel economy standards to DOT rather than EPA. This was not only because DOT understands the technologies and economics of the auto industry, but also because NHTSA is the nation's leading motor vehicle safety regulator, and Congress sought to ensure that fuel economy requirements would not adversely affect highway safety. Unfortunately, the Biden Administration has flouted these statutory limitations in nearly every respect. The predictable result is higher expected transportation costs for Americans.

- In pursuit of an anti–fossil fuel climate agenda never approved by Congress, the Biden Administration has raised fuel economy requirements to levels that cannot realistically be met by most categories of ICE vehicles. The purpose is to force the auto industry to transition away from traditional technologies to the production of electric vehicles (EVs) and compel Americans to accept costly EVs despite a clear and persistent consumer preference for ICE-powered vehicles. In further support of this agenda, federal regulators administer a scheme of generous fuel economy credits that subsidize EV producers such as Tesla at the expense of legacy automakers.

- Moreover, and contrary to Congress's design, the Biden EPA has been given preeminence in the regulation of fuel economy through the setting of carbon dioxide emissions limits for new motor vehicles under the Clean Air Act. Because carbon dioxide emissions levels correspond to mileage in automobiles powered by fossil fuels, these EPA rules are de facto fuel economy requirements that apply independently of NHTSA's standards.

- The Biden Administration has also granted California a special waiver under the Clean Air Act that permits the California Air Resources Board (CARB) to issue its own fuel economy directives, notwithstanding EPCA's prohibition on state standards. Under this waiver, CARB has ordered automakers to phase out the sale of ICE-powered automobiles in California and transition to the production of zero-emission vehicles by 2035. The Clean Air Act allows other states to follow California's requirements; thus, CARB is effectively determining fuel economy policies for the entire nation.

As a result of these regulatory actions, automobiles will be significantly more expensive to produce, there will be fewer affordable new vehicle options for American families, and fewer new vehicles will be sold in the U.S. That will do more than

translate into a loss of auto industry jobs for American workers: It will also mean a significant increase in traffic deaths and injuries. As fewer new cars are purchased, the price of used cars will rise, and more Americans will be left driving older cars, which traffic statistics show are much less safe than newer vehicles. NHTSA itself has acknowledged that the Biden Administration's fuel economy standards will generate hundreds of additional fatalities and thousands of additional injuries on U.S. highways. Because older cars also produce more harmful air pollution, the aging of America's fleet will also have negative consequences for air quality.

In addition, the Biden Administration's efforts to accelerate EV sales by regulatory fiat work against the national security interests of the United States in contravention of Congress's goals under EPCA. Increasing the production of EVs will make the U.S. more dependent on China and other foreign countries that control the supply and processing of rare earth minerals that are needed for EV batteries. And the faster deployment of EVs will put a major strain on America's vulnerable power grid, requiring large investments in critical infrastructure and a big boost in the nation's electricity production, including from gas-fired and oil-fired power plants.

In exchange for all of these harmful effects—on traffic safety, consumer choice, American jobs, the nation's air quality, and U.S. national security—the Biden fuel economy regulations are predicted to have no meaningful effect on global temperature trends over the long term.[8]

The next Administration must return the federal fuel economy program to the limits established by Congress. The standards issued by NHTSA must be reset at reasonable levels that are technologically feasible for ICE automobiles and consistent with an increase in domestic auto production and healthy growth in the sale of safer and more affordable new vehicles. To achieve these goals, the next Administration should:

- **Reduce proposed fuel economy levels.** The Administration should consider returning to the minimum average fuel economy levels specified by Congress for model year 2020 vehicles: levels aimed at achieving a fleet-wide average of 35 miles per gallon. Consideration should be given to maintaining the standards at those levels for the near term in order to promote the objectives laid out by Congress.

- **Ensure that DOT again exercises priority in the setting of fuel economy standards.** Any EPA limits on carbon dioxide emissions, even if authorized under the Clean Air Act, must support and work in harmony with DOT standards and must not override them or usurp DOT's regulatory role under EPCA. For example, EPA could regulate air conditioning systems and leave engine standards to DOT.

- **Revoke the special waiver granted to California by the Biden Administration.** California has no valid basis under the Clean Air Act to claim an extraordinary or unique air quality impact from carbon dioxide emissions, and EPCA is clear that under no circumstances may a state agency regulate fuel economy in place of DOT. The federal government should therefore exercise its preemptive authority over CARB and take all steps necessary to invalidate any inconsistent fuel economy requirements imposed by CARB, including its ban on sales of internal combustion engines.

FEDERAL HIGHWAY ADMINISTRATION

The Federal Highway Administration (FHWA) has jurisdiction over the interstate highway system, which is vital for the transportation of goods and people throughout the country. The FHWA, in conjunction with state DOTs, works to ensure the quality and safety of highways and bridges.

However, over the course of decades, presidential Administrations and Congress have caused the FHWA to go beyond its original mission. The variety of infrastructure projects now eligible for funding through the FHWA include ferryboat terminals, hiking trails, bicycle lanes, and local sidewalks. In many cases, such projects should be the sole responsibility of local or state governments, not dependent on FHWA funding. For local projects, federal involvement adds red tape and bureaucratic delays rather than value.

The Biden Administration has broadened the FHWA's scope by emphasizing the priorities of progressive activists instead of pursuing practical goals. These policies include a focus on "equity," a nebulous concept that in practice means awarding grants to favored identity groups, as well as imposing obligations on states concerning carbon dioxide emissions from highway traffic—areas not encompassed within FHWA's statutory authorities. Furthermore, the Biden Administration's embrace of the "Vision Zero" approach to safety often means actively seeking congestion for automobiles to reduce speeds. Finally, the Administration has sought to use a "guidance memo" to impose policies not enacted by Congress, most notably to make it harder for growing states to expand highway capacity. Instead, the next Administration should:

- **Seek to refocus the FHWA on maintaining and improving the highway system.**

- **Remove or reform rules and regulations that hamper state governments.**

- **Reduce the amount of federal involvement in local infrastructure decisions.**

AVIATION

Americans value the ability to travel safely and inexpensively by air. In the United States, the private sector has developed the world's safest, most effective passenger and cargo air transport networks. Current policies threaten to undo that legacy and to strangle the development of new technologies such as drones and "advanced air mobility," including small aircraft to serve as air taxis or to conduct quiet vertical flights.

Starting in the 1970s, deregulation and increased competition turned air travel from a luxury to an affordable travel option enjoyed by most Americans. The United States has four major airlines, each with roughly 20 percent of the domestic market. They compete with each other over the vast majority of routes. Several smaller carriers provide additional competition and other options for travelers.

The current Administration's policies are self-contradictory. In order to placate specific labor groups, the Biden Administration not only opposes the growth of the major airlines, which would reduce the price of air travel, but also opposes measures—such as low-fare foreign competition and joint ventures of smaller U.S. carriers—that would increase competition.

Another problematic area is aviation consumer protection. Congress has authorized DOT to prohibit specific "unfair and deceptive practices" in the airline industry after undertaking a hearing process—authority exercised by the Office of Aviation Consumer Protection within the General Counsel's Office. Beginning with the Obama Administration, this authority has been used to justify broad new regulations—in the name of achieving "fair" competition—that would impose burdensome disclosure mandates and other costly requirements without a sufficient process for gathering supporting evidence. The Trump Administration reformed the process for issuing such "unfair and deceptive practices" rules,[9] but the Biden Administration promptly reversed those reforms.[10] A new Administration should restore them.

In general, the next Administration should focus its efforts on making air travel more affordable and abundant, increasing safety, increasing competition to benefit the flying public, and removing obstacles to the rapid deployment of emerging aviation technologies that hold the promise of improved safety, competition, opportunity, and growth. To achieve a more level playing field and increase options for the traveling public, the next Administration should:

- **Publicly indicate that a new Administration would support joint-venture efforts by smaller carriers (for example, Jet Blue and Spirit) to achieve scale necessary to reduce costs and compete more effectively with the larger carriers.**

- **Review foreign ownership and control limitations and, if necessary, work with Congress to change existing statutes.** Worldwide investors

are providing access to capital to foreign airlines for innovations and new equipment purchases that U.S. airlines cannot match. The U.S. should use the Committee on Foreign Investment in the United States (CFIUS) process to keep out nefarious foreign actors while allowing investment from investors in designated like-minded countries so long as U.S.-based investors maintain plurality ownership.

- **Establish a New Entry Initiative that commits the federal government to approving or rejecting the applications of new air carriers within 12 months.**

- **Initiate a rulemaking to allocate slot-pairs more consistently to airlines at capacity-controlled airports on the primary basis of safety, maximizing capacity, and competition.**

In a perfect world, the market would dictate these options, but in the highly regulated international aviation sector, the current incentives are to keep out competitors. Slot regulations have not been updated since the 1990s.

Well-meaning legislation and the pilot shortage are adversely affecting aviation safety. In the wake of the 2009 Colgan Airlines crash, all commercial pilots and copilots were required to have 1,500 flight hours. Today, facing a pilot shortage, larger and safer twin-engine planes with two pilots are being phased out of service at smaller airports and replaced by single-engine planes that have only one pilot. This trend could be reversed if copilots were required to have fewer flight hours or could count certified simulator training.

Federal subsidies are also distorting the commercial market. The Essential Air Service (EAS) program subsidizes flights to 200 small airports that are not otherwise commercially viable. The program was established in the 1970s as a temporary measure to cushion deregulation. It has since been made permanent. Finally ending the program would free hundreds of pilots to serve larger markets with more passengers. A new Administration could reform regulations to encourage airports in lower-served areas of the nation.

International air travel is regulated and restricted by individual treaties between the United States and other countries. The new Administration should remain committed to the laudatory goal of "Open Skies." However, many of the largest emerging markets are not fully open, and our aviation policies should reflect that reality and ensure that U.S. air carriers compete on a level playing field. Specifically, so long as U.S. carriers are not able to fly over Russian airspace, the U.S. should not allow foreign carriers serving markets in East Asia and South Asia to enjoy a competitive advantage by continuing to allow them to fly to the U.S. China has failed to put in place several of the policies to which it has already agreed; the U.S. should

not offer additional negotiations until the Chinese implement the agreements they have already signed.

The current Administration's policies in several areas that affect aviation and limit America's future opportunities for growth are internally inconsistent. In addition to a New Entry Initiative, the new Administration should establish an interagency clearinghouse to drive consistent policies across the government on spectrum, drones, and advanced air mobility.

FEDERAL AVIATION ADMINISTRATION

With a budget of $18.6 billion requested for FY 2023[11] and an international regulatory footprint, the Federal Aviation Administration (FAA) is DOT's most visible mode. It needs reform. Air traffic control (ATC) operations account for two-thirds of FAA's budget, and the Air Traffic Organization (ATO) is far behind its counterparts in Australia, Canada, and Western Europe in implementing 21st century technology. The FAA's primary mission is ATC; its two smaller functions are distributing federal airport grants and regulating all aspects of aviation safety.

The FAA was once considered the world's best government aviation agency. Those days are long past. In the more than five decades since 1958 when the Federal Aviation Agency (precursor to the Federal Aviation Administration) was formed, there have been notable developments in air traffic control technology, aircraft avionics, and engine reliability, but despite many well-intentioned attempts, there have been few changes in the FAA's funding structure. The FAA is still improperly organized and financed, and the management reforms provided in the late 1990s remain largely unused.

The FAA is 10 years older than DOT. It provides two separate and functionally different services: the world's largest and most complex Air Navigation Service Provider (ANSP) and, at the same time, the world's largest civil aviation regulatory and certificatory agency. The first is a 24/7/365 air traffic service provider. The second is an inherently governmental organization responsible for ensuring that aerospace operators, vehicles, airports, and ANSPs are properly certified and follow all FAA regulations. These two different organizations ought to run separately.

The FAA is the only modern Civil Aviation Authority (CAA) in the world that does not assess fees for its services. Its funding structure, subject to the annual appropriations process, stifles efficiency and innovation—and the FAA does not innovate well. It spends too much time and money on research and development (R&D) and is not very good at either one. It should get out of the R&D business and focus on testing, evaluating, and certifying private-sector innovation much more quickly than it does today.

The FAA workforce needs to modernize. The agency needs safety and certification experts, not professional airframe and powerplant mechanics (A&Ps). It

needs to hire people trained to oversee mechanics, engineers, and pilots. It is time to consider promoting the FAA's top executive team from within and requiring strict professional requirements for its top appointees. Organizations such as the FAA whose sole responsibility is public safety should be fully auditable and led by experts in their field or industry with oversight from DOT leadership.

For 60 years, the FAA was the global leader in aerospace, from general aviation to commercial space, but the U.S. lead has vanished. The FAA's overly bureaucratic, legalistic, byzantine, and more recently hyperpoliticized way of processing regulations, adopting innovation, publishing rules, and procuring new technologies has been eclipsed by foreign CAAs and ANSPs that are eagerly certifying drones and creating environments in which new technologies and new entrants, such as air taxis, can thrive. To regain America's global leadership in aviation, the next Administration should:

- **Separate the FAA from DOT or, at a minimum, separate the ATO from the FAA.**

- **Completely restructure the FAA's funding system so that the nation's aviation system is not held prisoner to annual appropriations or used as a political football to solve nonaviation problems.**

- **Require the FAA to operate more like a business.** The FAA has not made good use of the unique authority it has been given in areas like personnel and acquisition.

In Europe, conventional control towers are being replaced by digital/remote towers with high-resolution cameras and other sensors on tall structures and at points adjoining runways. In Germany and Scandinavia, as many as 15 small airports can be controlled from one remote tower center. The FAA has yet to certify a single digital/remote tower.

Text messaging between controllers and pilots is widespread over the oceans. The ATO began to implement what is now called DataComm in 2002 but suspended the project in 2003. This was restarted at airport control towers in 2016, but as of October 2022, it was available in only seven of the 20 high-altitude control centers.

Current technology enables flights to be managed "anywhere from anywhere," but the ATO resists consolidating its 20 aging centers into a much smaller number—and lacks the funds to consolidate them. The FAA as regulator and the ATO as traffic manager have no plans in place to handle millions of drones and other emerging technologies such as electric vertical take-off and landing (eVTOL) aircraft.

These shortcomings have been documented over many decades by the Government Accountability Office and DOT Inspector General. One peer-reviewed study for the Hudson Institute by scholar Robert Poole identified the ATO's underlying problems as including an overly cautious culture, a growing lack of technological and managerial expertise, the inability to finance major capital projects with revenue bonds, and overdependence on aerospace/defense contractors.[12]

All of these problems are interrelated. Because of the ATO's lack of top-notch engineers and program managers, it has become dependent on aerospace contractors, unlike counterparts in Canada and the United Kingdom. Operating within the constraints imposed by the annual congressional appropriations process—and with no bonding authority—the ATO is forced to implement major projects piecemeal over many years. The ATO's overly cautious culture appears to stem from its being embedded in a safety regulatory agency rather than being regulated at arm's length (as are airlines and airports).

Three organizational changes, all requiring legislation, offer the likelihood of dealing with these problems based on the experiences of air traffic providers in Canada and Europe. They could be implemented one at a time or together.

- **Separate the ATO from the FAA and relocate it to separate headquarters outside the District of Columbia.**

- **Shift from aviation user taxes to fees for air traffic services paid directly to the ATO.**

- **Allow the ATO to issue long-term revenue bonds for major projects.**

Shorter-term reforms could include implementing user fees for unconventional airspace users (for example, advanced air mobility, space launch, and recovery) and giving the ATO a deadline after which it could not authorize or fund any more nondigital/remote control towers. These reforms would also require legislation.

FEDERAL TRANSIT POLICY

The definition of "mobility" continues to evolve dramatically with the rise of new multimodal concepts, traveler needs, and emerging capabilities. These fundamental changes in the way transportation services are offered also influence the form of our communities.

New micromobility solutions, ridesharing, and a possible future that includes autonomous vehicles mean that mobility options—particularly in urban areas—can alter the nature of public transit, making it more affordable and flexible for Americans. Unfortunately, DOT now defines public transit only as transit provided by municipal governments. This means that when individuals change their

commutes from urban buses to rideshare or electric scooter, the use of public transit decreases. A better definition for public transit (which also would require congressional legislation) would be transit provided for the public rather than transit provided by a public municipality.

The COVID-19 pandemic caused a substantial decline in usage for all forms of transportation. Mass transit has been the slowest mode to recover, with October 2022 ridership reaching only 64 percent of the level seen in October 2019. The sustained increase in remote work has caused changes in commuting patterns. Since facilitating travel for workers is one of the core functions of mass transit systems, a permanent reduction in commuting raises questions about the viability of fixed-route mass transit, especially considering that transit systems required substantial subsidization before the pandemic.

Regrettably, the 2021 Infrastructure Investment and Jobs Act[13] authorized tens of billions of dollars for the expansion of transit systems even as Americans were moving away from them and into personal vehicles. Lower revenue from reduced ridership is already driving transit agencies to a budgetary breaking point, and added operational costs from system expansions will make this problem worse.

The Capital Investment Grants (CIG) program is another example of Washington's tendency to fund transit expansion rather than maintaining or improving current facilities. The CIG program, which began in 1991, funds only novel transit projects. These can include new rail lines (regardless of the demand for preexisting rail in the area) and costly operations such as streetcars.

Because Americans have demonstrated a strong preference for alternative means of transportation, rather than throwing good money after bad by continuing federal subsidies for transit expansion, there should be a focus on reducing costs that make transit uneconomical. The Trump Administration urged Congress to eliminate the CIG program, but the program has strong support on Capitol Hill. At a minimum, a new conservative Administration should ensure that each CIG project meets sound economic standards and a rigorous cost-benefit analysis.

The largest expense in transit operational budgets is labor. Compensation costs for transit workers exceed both regional and sector compensation averages. This is driven by generous pension and health benefits rather than by exorbitant wages. Since workers value wages more than they value fringe benefits, this has led to a perverse situation in which transit agencies have high compensation costs yet are struggling to attract workers.

The next Administration can remove the largest obstacle to reforming labor costs. Section 10(c) of the Urban Mass Transportation Act of 1964[14] was initially intended to protect bargaining rights for workers in privately owned transit systems that were being absorbed by government-operated agencies. The provision has mutated into a requirement that any transit agency receiving federal funds cannot reduce compensation, an interpretation that far exceeds the original statute.

Returning to the original intent would allow transit agencies to adjust fringe benefits without fearing a federal lawsuit.

It is also vital to move away from using the Highway Trust Fund to prop up mass transit. The fund was driven into insolvency (and repeated bailouts) through decades of transfers to transit without any increase in transit usage to show for it. With the federal government facing mounting debt, the best course of action would be to remove federal subsidies for transit spending, allowing states and localities to decide whether mass transit is a good investment for them.

FEDERAL RAILROAD POLICY

The Federal Railroad Administration (FRA) is making decisions based on political considerations that are at variance with its safety mission. Instead of basing regulatory decisions on the costs and benefits of the available alternatives, FRA is promoting actions that favor the status quo and inhibit the use of technology to improve railroad safety. FRA should be making decisions based on objective evidence of the most cost-effective way to accomplish the agency's safety goals.

FRA's singular focus on job preservation is contrary to FRA's mission, and it has a deleterious effect on the morale of FRA's professional staff, as shown by the annual employee surveys conducted by the Office of Personnel Management. FRA needs to communicate clearly to its career employees a new commitment to making decisions that are consistent with the agency's safety mission.

FRA's procedures call for decisions on waivers to be made by its Safety Board. Appeals can be taken to the Administrator. However, FRA has deviated from these procedures as the Administrator has injected himself into Safety Board decisions. FRA needs to review its actions with respect to specific proceedings where the agency's direction cannot be justified. For example:

- FRA's Notice of Proposed Rulemaking (NPRM) on crew size is not based on safety considerations; it is designed to reduce flexibility by making it impossible for railroads to operate with crews of fewer than two in circumstances where there is no operational need for the second crew member.

- Although FRA could adopt a modern inspection program that takes advantage of technological ways to inspect track, it is refusing to amend 50-year-old track inspection requirements, leaving customers with higher costs.

- FRA is refusing to take final action on a rulemaking proceeding that would modernize brake inspection requirements by taking advantage of the ability

to track brake inspections on rolling stock electronically instead of by using paper air brake slips, which would enable extending the interval between brake inspections for trains and eliminating restrictions on the ability to place/remove blocks of cars in trains.

- FRA will be proposing certification requirements for dispatchers and signal employees despite the failure of the Railroad Safety Advisory Committee (RSAC) to identify any safety benefit.

- FRA is planning to propose emergency escape breathing apparatus requirements for train crews even though FRA staff long ago concluded that the costs of these requirements would far outweigh their very minimal benefits.

It is vital that the integrity of FRA's research program be preserved. In 2022, FRA switched the management of the Transportation Technology Center (TTC) in Pueblo, Colorado, from a subsidiary of the Association of American Railroads (AAR) to Ensco, Inc. FRA seems determined to direct research to TTC, even when there are better choices with respect to the research in question, in an effort to support TTC financially and justify its decision to change management at TTC. This change in approach threatens the collaborative approach to research between FRA and the railroads that has existed for decades. FRA should make its decisions on where to spend its research dollars solely on the merits of improving the safety and efficiency of the railroad industry.

MARITIME POLICY

The Maritime Administration (MARAD) was established by President Harry Truman in 1950 and was transferred to DOT in 1981. A principal function is "maintain[ing] the overall health of the U.S. Merchant Marine,"[15] which is important both to national defense and to foreign and domestic commerce. MARAD is also in charge of the United States Merchant Marine Academy and operates ships and funding for the six state maritime academies.

MARAD would be better served by being transferred from DOT to the Department of Homeland Security (DHS). MARAD is the only DOT modal administration that does not regulate the industry that it represents: The maritime industry is regulated by the U.S. Coast Guard (ships and personnel) and by the Federal Maritime Commission (cargo rates and competitive practices).

Furthermore, MARAD has responsibilities both in peacetime commerce and operationally in wartime/crisis sealift through its responsibility to manage the National Defense Reserve Fleet and 45-ship Ready Reserve Force for the U.S. Navy. These missions are unique to MARAD within DOT. As a result, MARAD's missions

and purpose, and therefore its funding priorities, are not well understood and historically have been minimalized in planning and budgeting.

MARAD, including its subordinate Service Academy (the U.S. Merchant Marine Academy) should be transferred to the Department of Defense (if the Coast Guard is located there because DHS has been eliminated) or to the Department of Homeland Security. In this way, the two agencies charged with oversight and regulation of the Maritime sector—MARAD and the United States Coast Guard—would be aligned under the same department where operational efficiencies could be realized more easily.

Serious consideration should be given to repealing or substantially reforming the Jones Act,[16] which would require legislation. The economic costs of the Jones Act, which is notionally in place to promote a robust Merchant Marine, vastly exceed its effect on the supply of domestic ships. For instance, no liquified natural gas (LNG) can be shipped from Alaska to the lower 48 states because there are no U.S.-flagged ships that carry LNG. If there are genuine concerns about U.S. fleet capacity in the absence of the Jones Act, it would be possible to do so through an expansion of the Defense Reserve Fleet.

Another DHS agency, the Federal Emergency Management Agency (FEMA), is a frequent user of MARAD Ready Reserve Force shipping during disaster assistance missions. Transferring MARAD to DHS would make coordination and requisition of those vessels a smoother and more rapid process. DHS has responsibility for reviewing and approving Jones Act waivers. This process first requires a market survey of available shipping tonnage that is completed by MARAD. The processing of Jones Act waiver requests would be streamlined if both agencies were in the same department.

Finally, DHS as a department is experienced in administering and budgeting for the operation of an existing federal service academy, the U.S. Coast Guard Academy, which is similar to the U.S. Merchant Marine Academy in size. There would be increased efficiencies and better alignment of the missions of these two institutions if they were under one single department that has equity in the industries served by these academies.

CONCLUSION

Americans need more abundant and affordable transportation. They need more affordable and safer cars as well as physical aspects of transportation such as roads, bridges, airports, ports, and rail lines. The Department of Transportation should be evaluating which aspects of transportation are contributing to the economic competitiveness of the United States and the well-being of Americans—and that therefore should continue to be funded.

All too often, DOT's mission is described as reducing the number of trips, using less fuel, and raising the costs of travel to Americans through increased use of

renewables. These goals are not compatible with what should be DOT's purpose: to make travel easier and less expensive. That is what the American people want, and that is what DOT should provide.

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but Steven Bradbury, David Ditch, and Robert Poole deserve special mention. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

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DEPARTMENT OF VETERANS AFFAIRS

Brooks D. Tucker

MISSION STATEMENT

The Department of Veterans Affairs (VA) is the primary provider of health care, benefits, and memorial affairs for America's veterans and their families. The VA has the noble responsibility to render exceptional and timely support and services with respect, compassion, and competence. The veteran is at the forefront of every VA process and interaction. The VA must continually strive to be recognized as a "best in class," "Veteran-centric"[1] system with an organizational ethos inspired by and accountable to the needs and problems of veterans, not subservient to the parochial preferences of a bureaucracy.

OVERVIEW

At the end of the Obama Administration, the VA was held in low esteem both by the veterans it served and by the employees who served these former warriors. Eroding morale caused by the downstream effects of a health care access crisis in 2014 led to the resignation of Secretary Eric Shinseki and extensive oversight investigations by Congress from 2015–2016.

By 2020, however, the VA had become one of the most respected U.S. agencies. This significant progress was due in part to the leadership of Secretary Robert Wilkie (2018–2021) and his team of political appointees and career senior executives, many of them veterans, who led the effort to ensure that the VA became "Veteran-centric" in its governance decisions and fostered a more positive work environment.

This mindset translated into a department that was better attuned to employees' and veterans' needs and experiences in the daily operations of health care, benefits,

and memorial affairs. During that period, the VA received the largest number of watershed congressional authorizations to reform its health care and benefits that it had received since the post–Vietnam War years along with historic increases in annual appropriations, which have tripled since the last full year of the George W. Bush Administration.

The current VA leadership team of Biden appointees has adopted some of their predecessors' governance processes. However, they have not sustained the previous Administration's commitment to a genuine "Veteran-centric" philosophy, most notably with respect to the delivery of health care, and harbor a bias toward expanding the unionized federal employee workforce that has not always been aligned with a focus on "Veteran-centric" care. There also is growing concern in Congress and the veteran community that the VA is poorly managing and in some cases disregarding provisions of the VA MISSION [Maintaining Internal Systems and Strengthening Integrated Outside Networks] Act of 2018[2] that codify broad access for veterans to non-VA health care providers. Efforts to expand disability benefits to large populations without adequate planning have caused an erosion of veterans' trust in the VA enterprise.

Additionally, the current VA leadership is focusing very publicly on "social equity and inclusion" within departmental policy discussions toward ends that will affect only a small minority of the veterans who use the VA. For the first time, the VA is allowing access to abortion services, a medical procedure unrelated to military service that the VA lacks the legal authority and clinical proficiency to perform. In addition to continuing the grotesque culture of violence against the child in the womb, these sociopolitical initiatives and ideological indoctrinations distract from the department's core missions.

DEPARTMENTAL HISTORY

Following the Civil War, state veterans homes were established to provide medical and hospital treatment for all injuries and diseases. When the United States entered World War I in 1917, "Congress established a new system of Veterans benefits, including programs for disability compensation, insurance for service personnel and Veterans, and vocational rehabilitation for the disabled"[3] that was overseen by three different federal programs: the Veterans Bureau, the Department of the Interior's Bureau of Pensions, and the National Home for Disabled Volunteer Soldiers. In 1921, Congress combined those programs into the Veterans Bureau. Following World War II, a national VA hospital system, much of which remains operational today, was established to care for millions of returning veterans.

Following the Vietnam War, the VA's federally owned and operated hospital network expanded again to meet the needs of the volunteer and draftee population. In the past two decades, the VA has purposely transitioned to leasing medical properties rather than building expensive new facilities that can take years to complete and often experience budget overruns. As the nature of health care has evolved

with a growth in same-day surgical procedures and outpatient care, so has the VA, and in 2018 Congress added access to private-sector urgent care outlets as one of the VA's health care benefits.

Today, the VA operates 172 inpatient VA Medical Centers (VAMCs), which are an average of 60 years old, and 1,113 Community Based Outpatient Clinics (CBOCs), which are newer facilities designed to meet the needs of veterans closer to home. The VA also manages a Community Care Network (CCN) through contracts with Optum and TriWest, third-party health care administrators responsible for building and maintaining a robust population of community providers to meet the needs of veterans referred for care outside of the VA system. Currently, approximately 6.4 million veterans out of 18 million nationally (and out of the 9.1 million who are enrolled) use the VA for health care; the remainder use employer-sponsored plans, Tricare, Medicare, and Medicaid.

The disability benefits system evolved significantly in the years between the Cold War era and the global war on terrorism, a period when the VA enrolled large numbers of veterans from World War II, Korea, and Vietnam who were seeking disability benefits and health care. Disability compensation is the largest VA benefit, but there also are dozens of others, the next largest of which are the GI Bill and the Home Loan Guaranty. These benefits are administered through 56 Regional Benefits Offices (RBOs) and hundreds of satellite sites around the country.

The Agent Orange Act of 1991[4] significantly expanded the scope of disability benefits for those who had deployed to Vietnam, and the cost of those benefits began to increase dramatically as the Vietnam generation of veterans aged and began to experience adverse health conditions, some of which were presumed to have been caused by defoliant chemicals used in Southeast Asia. In 2016 and 2017, a burdensome backlog of appeals of denied disability claims from multiple wartime generations—a backlog numbering in the hundreds of thousands—led to a joint effort by the VA, Veteran Service Organizations (VSOs), and Congress to pass legislation that streamlined appeal processes. Implemented in 2017, this historic "good governance" success has helped the VA to reduce the number of these appeals dramatically.

The Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act of 2022[5] addressed adverse health outcomes presumed to be the result of veterans' exposure to airborne toxins during the global war on terrorism and further expanded disability benefits to the most recent generation of veterans. These ambitious authorities, like the 1991 authorities, have the potential to overwhelm the VA's ability to process new disability claims and adjudicate appeals. Currently, the VA is seeking to hire large numbers of personnel to process these claims while exploring the use of an automated process to accelerate claims reviews and decisions. The ever-present lag in the hiring and training of new employees could result in major problems with the timely adjudication of benefits well into the next Administration in 2025.

In sum, the VA for the foreseeable future will experience significant fiscal, human capital, and infrastructure crosswinds and risks. Budgets are at historic highs, and with a workforce now above 400,000, the VA is contending with a lack of new veteran enrollees to offset the declining population of older veterans. Recruitment of medical and benefits personnel has become more challenging. Veterans are migrating from the northern states to the southern and western states for retirement and employment. Meanwhile, VA information technology (IT) is struggling to keep pace with the evolution of patient care and record keeping. Consequently, VA leaders in the next Administration must be wise and courageous political strategists, experienced managers to run day-to-day operations more effectively, innovators to address the changing veteran landscape, and agile "fixers" to mitigate and repair systemic problems created or ignored by the present leadership team.

VETERANS HEALTH ADMINISTRATION (VHA)

Needed Reforms

- Rescind all departmental clinical policy directives that are contrary to principles of conservative governance starting with abortion services and gender reassignment surgery. Neither aligns with service-connected conditions that would warrant VA's providing this type of clinical care, and both follow the Left's pernicious trend of abusing the role of government to further its own agenda.

- Focus on the effects of shifting veteran demographics. At least during the next decade, the VA will experience a significant generational shift in its overall patient population. Of the approximately 18 million veterans alive today, roughly 9.1 million are enrolled for VA health care, and 6.4 million of these enrollees use VA health care consistently. These 6.4 million veterans are split almost evenly between those who are over age 65 and those who are under age 65, but the share of VA's health care dollars is spent predominantly in the over-65 cohort. That share increases significantly as veterans live longer and use the VHA system at a higher rate.

  VHA enrollments of new users are increasingly at risk of being exceeded by the deaths of current enrollees, primarily because significant numbers of the Vietnam generation are reaching their life expectancy. The generational transition from Vietnam-era veterans to post-9/11 veterans will take several years to complete. The ongoing demographic transition is a catalyst for needed assessments of how the VA can improve the delivery of care to a numerically declining and differently dispersed national population

of veterans—a population that is more active, reaching middle age or retirement age, and migrating for lifestyle and career reasons.

At the center of the VHA's evolution during this generational transition is an ongoing tension, some of it politically contrived, between Direct Care for Veterans provided from inside the VHA system and Community Care for Veterans who are referred to private providers participating in the VHA's two Community Care Networks (CCNs). In recent years, the budget for Community Care has grown as demand from veterans has risen sharply, sometimes outpacing the budgets for Community Care at individual VAMCs.

The Trump Administration made Community Care part of its "Veteran-centric" approach to ensure that veterans would be able to participate more fully in their health care decisions and have options if or when the VHA was unable to meet their needs. The Biden Administration has watered down that effort, has sought various procedural ways to slow the rate of referrals to private doctors, and at some facilities is reportedly manipulating the Community Care access standards required by the VA MISSION Act of 2018. If the makeup of Congress is favorable in 2025, the next Administration should rapidly and explicitly codify VA MISSION Act access standards in legislation to prevent the VA from avoiding or watering down the requirements in the future.

First and foremost, a veterans bill of rights is needed so that veterans and VA staff know exactly what benefits veterans are entitled to receive, with a clear process for the adjudication of disputes, and so that staff ensure that all veterans are informed of their eligibility for Community Care. Currently, veterans are not routinely and consistently told that they are eligible for Community Care unless they request information or are given a referral.

- To strengthen Community Care, the next Administration should create new Secretarial directives to implement the VA MISSION Act properly. Sections for consideration and areas for reform include the following:

  1. Sections 101 and 103 (Community Care eligibility for access standards and the best medical interest of the veteran).

  2. Section 104 (Community Care access standards and standards for quality of care).

3. Section 121 (developing and administering an education program that teaches veterans about their health care options available from the Department of Veterans Affairs).

4. Section 152 (returning the Office for Innovation of Care and Payment to the Office of Enterprise Integration with a joint governance process set up with the VHA).

5. Section 161 (overhauling Family Caregiver Program expansion, which has gone poorly, so that it focuses on consistency of eligibility and awareness that the most severely wounded or injured may require the program indefinitely).

- Require the VHA to report publicly on all aspects of its operation, including quality, safety, patient experience, timeliness, and cost-effectiveness, using standards similar to those in the Medicare Accountable Care Organization program so that the government may monitor and achieve continuous improvement in the VA system more effectively.

- Encourage VA Medical Centers to seek out relevant academic and private-sector input in their communities to improve the overall patient experience.

Budget

- Conduct an independent audit of the VA similar to the 2018 Department of Defense (DOD) audit to identify IT, management, financial, contracting, and other deficiencies.

- Assess the misalignment of VHA facilities and rising infrastructure costs. The VHA operates 172 inpatient medical facilities nationally that are an average of 60 years old. Some of these facilities are underutilized and inadequately staffed. Facilities in certain urban and rural areas are seeing significant declines in the veteran population and strong competition for fresh medical staff.

  In 2018, Congress authorized an Asset Infrastructure Review (AIR) of national VHA medical markets to provide insight into where the VA health care budget should be responsibly allocated to serve veterans most effectively. However, the Senate Veterans Affairs Committee lacked the political will to act on the White House's nominations of commission members, and this ultimately led to termination of the AIR process. The next Administration should seek out agile, creative, and politically acceptable operational solutions to this aging infrastructure status quo,

reimagine the health care footprint in some locales, and spur a realignment of capacity through budgetary allocations. Specifically:

1. Embrace the expansion of Community Based Outpatient Clinics (CBOCs) as an avenue to maintain a VA footprint in challenging medical markets without investing further in obsolete and unaffordable VA health care campuses.

2. Explore the potential to pilot facility-sharing partnerships between the VA and strained local health care systems to reduce costs by leveraging limited talent and resources.

Personnel

- Extend the term of the Under Secretary for Health (USH) to five years. Additionally, authority should be given to reappoint this individual for a second five-year term both to allow for continuity and to protect the USH from political transition.

- Establish a Senior Executive Service (SES) position of VHA Care System Chief Information Officer (CIO), selected by and reporting to the chief of the VHA Care System with a dotted line to the VA CIO.

- Identify a workflow process to bring wait times in compliance with VA MISSION Act–required time frames wherever possible.

    1. Assess the daily clinical appointment load for physicians and clinical staff in medical facilities where wait times for care are well outside of the time frames required by the VA MISSION Act.

    2. Require VHA facilities to increase the number of patients seen each day to equal the number seen by DOD medical facilities: approximately 19 patients per provider per day. Currently, VA facilities may be seeing as few as six patients per provider per day.

    3. Consider a pilot program to extend weekday appointment hours and offer Saturday appointment options to veterans if a facility continues to demonstrate that it has excess capacity and is experiencing delays in the delivery of care for veterans.

    4. Identify clinical services that are consistently in high demand but require cost-prohibitive compensation to recruit and retain talent, and examine exceptions for higher competitive pay.

5. Assess the medical facilities where Community Care is readily available but referrals for Community Care are below the averages in other similar markets, referrals expiring are above the average, and/or canceled appointments are above the average. Identify reasons and factors and consider possible ways to improve timeliness and responsiveness for veterans.

6. Further explore how to leverage telehealth to reduce personnel costs across the enterprise and serve veterans. Continue to pursue expansion of broadband services to remote and rural areas.

7. Assess recruitment and retention in highly competitive medical markets to identify common limiting factors for attracting high-demand, specialized occupations.

8. Consider aggressively recruiting retired physicians who desire to serve veterans.

9. Consider expanding VA tuition assistance in exchange for reciprocal service in rural or understaffed VAMCs.

10. Examine the surpluses or deficits in mental health professionals throughout the enterprise, recognizing that the department needs a blend of social workers, therapists, psychologists, and psychiatrists with a focus on attracting high-quality talent.

- Conduct a high-priority assessment of Electronic Health Record (EHR) transition delays and functionality problems. VA innovation in health care for the next 20 years and beyond will rest squarely on the timely implementation of the new VHA EHR in coordination with the DOD's parallel pacing effort. The VA's EHR rollout has been blocked by technical delays at local facilities where personnel have raised safety concerns and infrastructure has not been modernized to accept the new system.

VETERANS BENEFITS ADMINISTRATION (VBA)

Needed Reforms

The most evident and ongoing concern is the complexity of benefits, which can lead to confusion for the veteran and, if not mitigated early in the veteran's interactions, long-term distrust of and animosity toward the VA. Wholesale benefits reform is unnecessary and politically a "third rail," but effective managerial

approaches and technology tools that currently exist in the private sector could be employed to improve existing VBA activities.

This problem is most pronounced in the disability claims process, which needs more and better management attention focused on streamlining the procedures involved in processing claims and administering benefits. The VA must improve timeliness of claim adjudication and benefits delivery: Veterans want the VBA to provide timely responses to requests for benefits support, render empathetic customer service and understandable explanations of those benefits, and deliver those benefits without frustrating delays (weeks, not months).

- Identify performance targets for benefits, report publicly on actual performance each quarter, and use these metrics to drive consistent improvement.

- Develop a new pilot "Express 30" commitment for a veteran's first fully developed disability compensation claim and organize the VBA to complete the first claim in 30 days.

- Hire more private companies to perform disability medical examinations. Delays in completing the examinations could be eliminated with more external capacity.

- Increase automation. Hiring additional staff to process claims is costly, is inflexible, and has yielded mixed results. Attempting to change laws and regulations simply to adjudicate claims would be a herculean effort given their complexity. The best way to provide benefits faster and more accurately is by using technology to perform most of the work. Technology currently exists in the private sector, but the VBA lacks the expertise to use it. This would be more of an organizational challenge than a technology hurdle.

- Reduce improper payment and fraud. About $500 million is improperly paid out each year. Better tools, training, and management could reduce this substantially, but rule changes at the departmental level would be needed.

Budget

The VA's Schedule for Rating Disabilities (VASRD) has assigned disability ratings to a growing number of health conditions over time; some are tenuously related or wholly unrelated to military service. The further growth in presumptive service-connected medical conditions pursued by Congress and Veteran Service Organizations, begun with Agent Orange and most recently for Burn Pits/Airborne

Toxins, has led to historic increases in mandatory VBA spending in recent years. The VA has a time-phased plan to reassess the VASRD and its ratings for compensation, but this internal process can be slow and laborious, requires Office of Management and Budget (OMB) approvals, and can become politically charged both in Congress and with VSOs.

- The next Administration should explore how VASRD reviews could be accelerated with clearance from OMB to target significant cost savings from revising disability rating awards for future claimants while preserving them fully or partially for existing claimants.

- The VBA's Information Technology top-line budget should be reexamined and reassessed in light of the need for expanded automation across the enterprise.

- Traditionally, VHA captures the large majority of VA IT funding. The VBA needs to make the case for a larger IT budget with clear requirements to support that request.

Personnel

- Pursue reforms of the Human Capital Management process and operations within the VBA to build a more blended workforce with more contractors to process claims. This would free federal employees to perform other duties and be involved solely with the final decision to award benefits.

- Improve the VBA acquisition workforce. The VBA needs more world-class contractor support. Currently, few of the top companies have contracts with the VBA, and the VBA needs to conduct more outreach to the private sector through senior leader engagement and industry conferences.

- To identify more effective and efficient ways to complete claims, establish a knowledge exchange program with top-tier private-sector companies that do similar work. The VBA is fundamentally a financial services organization. A significant amount of its work has a private-sector analogue that could be leveraged to improve service to veterans.

- For most of its existence, the VBA has been a risk-averse, insular, paper-based organization, implementing technology only over the past decade. This insularity has led to a predominantly "build it ourselves" approach, partly because VBA staff has limited experience or insight into current private-sector tools and methods and partly because the VBA struggles to compete

with the VHA for IT funding. Senior executive leadership needs more innovators and trail blazers—qualities that have sometimes been lacking in the VBA's senior ranks. Recruiting a more relevantly knowledgeable and technologically savvy team, along with robust political control of the VA, could bring about better solutions to the VBA's workflow challenges.

HUMAN RESOURCES AND ADMINISTRATION (HRA)

Needed Reforms

- Rescind all delegations of authority promulgated by the VA under the prior Administration.

- Transfer all career SES out of PA/PAS-designated positions on the first day and ensure political control of the VA.

- Take a close and analytically critical look at where hybrid and remote work is a net positive as a functional necessity and where in-person collaboration and presence will help to instill a strong work ethic and a more cohesive environment for productivity from the Office of the Secretary across the headquarters enterprise.

The COVID-19 pandemic spurred a significant shift to hybrid and telework options for large segments of the staff in the Washington headquarters, in its satellites, and at some VBA Regional Offices. The "remote work" expectation has been amplified and formalized within the Biden Administration team at VA to the extent that the current Secretary, Deputy Secretary, and their staffs are not "in office" as a matter of a routine presence while VA staff in Washington, D.C., have limited in-person meetings, relying more frequently on video conference calls. The short-term and long-term effects of this policy on the department are unknown, but generally, the policy may be undermining the cohesiveness and competencies of some staff functions and diluting general organizational accountability and responsiveness.

Budget

- Expedite the acquisition of a new Human Resources Information Technology (HRIT) system. The current system is not user-friendly; has minimal fusion, middle-ware capacity; and is not conducive to data driven personnel decisions. Personnel data needs to be organized and managed to its full potential. The HRIT system, associated databases, and other "shadow" personnel systems have no shortage of data; the problem comes with effective management of the data.

- Broaden pay and benefits in critical VA skill sets (beyond medical care occupations) to be more competitive with private-sector industry. IT, acquisition, cyber, and economists are some examples of skill sets that are difficult for the VA to recruit, largely because of the limitations of federal pay scales.

- Continue to maximize the use of new VA hiring and pay authorities provided by Congress in the RAISE Act[6] and PACT Act[7] as well as existing authorities in student loan forgiveness and the Public Service Loan Forgiveness program.

Personnel

- Foster a culture that is mission (veteran) driven, alert, engaged, and habitually responsive to the veteran, and structure an environment that promotes a flexible and agile workplace.

- Increase employee satisfaction/experience to improve recruitment and retention of VA personnel. Go beyond the traditional focus on the extrinsic (monetary pay and bonuses) and seek creative ways to instill teamwork, loyalty, and pride.

- Train leaders and managers to promote an energized and productive workplace culture and reward those who do it well. Ensure that senior leaders (SES) set the proper example.

- Focus more attention on hiring veterans and military spouses. The percentage of veterans employed at VA has been declining.

- Support the White House Office of Presidential Personnel (PPO) in identifying a fully vetted roster of candidates to assume all key positions at VA well ahead of formal nominations. The VA is the second-largest federal agency, yet it is authorized a woefully small number of PA/PAS positions when compared to other agencies of lesser size. Congress and the Office of Personnel Management should be engaged on ways to provide authorities for a higher number of non-career PA positions. The White House PPO can be inclined to discount the VA's importance, but given the political attention that VA can generate for Congress and the media, PPO should understand the importance of finding talented political appointees to serve at VA.

- Increase the number and utilization of Limited Term Appointment Senior Executive Service positions for up to three years to work on special projects to ensure talent refreshment, talent acquisition, and flexibility.

- Manage the relationship with organized labor effectively and proactively.

    1. Ensure that any agenda that includes labor/civil service reform in the VA has a clear direction from the Secretarial level, support from the General Counsel, alignment with the Assistant Secretary for Human Resources and Administration, and a unified and strong political will to carry it out. Without those elements, labor reforms are very difficult to accomplish.

    2. Ensure that each senior leader in the process gets buy-in from reform-minded career employees willing to accept and support change. Those mid-level and senior-level managers exist, but they will need to be identified early and shown trust and confidence.

    3. Ensure that the White House communicates the labor reform agenda swiftly. Trump Administration executive orders on civil service reform (official time, government-furnished office space) were issued too late, and departments and agencies were not prepared to execute them.

    4. Anticipate the inevitable opportunities for legal challenges from organized labor, and be prepared for them to happen and be dragged out—which makes early, decisive timing all the more important.

    5. Ensure that the White House is prepared to support a concerted and deliberate effort on implementation to avoid perceptions of a disconnected strategy and disaggregated effort.

    6. Remain mindful of which labor contracts end, when they end, and what the agency's goals for renegotiation are. If not done effectively, contract end dates will be missed or lack notification. It is therefore essential to have a clear strategy with respect to what leadership wants from a new contract: Do not make the perfect the enemy of the good in contract negotiations.

- Work with Congress to sunset the Office of Accountability and Whistleblower Protection (OAWP). OAWP was well intentioned when formed, but it is redundant with the activities of supervisors as well as equal employment opportunity, Office of the Inspector General, Office of Special Counsel, and other policies, programs, and procedures for holding employees accountable. This redundancy results in lengthy investigations, gaps in coverage, and an overall ineffective method of employee and supervisor accountability.

- Consider decoupling HRA and the Office of Security and Preparedness (OSP). When Congress directed that the OAWP be established, it did not include authorities for a new Assistant Secretary position; consequently, the OSP was combined with HRA to free a PAS position. The functions of HRA and OSP are dissimilar and thus create an organization that is difficult to staff with the talent needed to execute both missions effectively.

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but Darin Selnick, Paul R. Lawrence, and Christopher Anderson deserve special mention. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

ENDNOTES

1. U.S. Department of Veterans Affairs, Veterans Health Division, VHA Directive 1003, "VHA Veteran Patient Experience," April 14, 2020, pp. 1 and B-1.
2. S. 2372, VA Mission Act of 2018, Public Law No. 115-182, 115th Congress, June 6, 2018, https://www.congress.gov/115/plaws/publ182/PLAW-115publ182.pdf (accessed January 30, 2023).
3. U.S. Department of Veterans Affairs, VA History Office, "VA History," last updated May 27, 2021, https://www.va.gov/HISTORY/VA_History/Overview.asp (accessed January 28, 2023).
4. 38 U.S. Code § 1116, https://www.law.cornell.edu/uscode/text/38/1116 (accessed January 28, 2023).
5. S. 3373, Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics Act of 2022 (Honoring Our PACT Act of 2022), Public Law No. 117-168, 117th Congress, August 10, 2022, https://www.congress.gov/117/plaws/publ168/PLAW-117publ168.pdf (accessed January 28, 2023).
6. H.R. 2471, Consolidated Appropriations Act, 2022, Public Law No. 117-103, 117th Congress, March 15, 2022, Division S, Title I, https://www.congress.gov/117/plaws/publ103/PLAW-117publ103.pdf (accessed March 18, 2023). Known variously as the Department of Veterans Affairs Nurse and Physician Assistant Retention and Income Security Enhancement Act and the VA Nurse and Physician Assistant RAISE Act.
7. See note 5, *supra*.

Section Four

THE ECONOMY

The next Administration must prioritize the economic prosperity of ordinary Americans. For several decades, establishment "elites" have failed the citizenry by refusing to secure the border, outsourcing manufacturing to China and elsewhere, spending recklessly, regulating constantly, and generally controlling the country from the top down rather than letting it flourish from the bottom up. The proper role of government, as was articulated nearly 250 years ago, is to secure our God-given, unalienable rights in order that we might enjoy the pursuit of happiness, the benefits of free enterprise, and the blessings of liberty.

Finding the right approach to trade policy is key to the fortunes of everyday Americans. In Chapter 26, president of the Competitive Enterprise Institute Kent Lassman and former White House director of trade and manufacturing policy Peter Navarro debate what an effective conservative trade policy would look like. Lassman argues that the best trade policy is a humble, limited-government approach that would encourage free trade with all nations. He maintains that aggressive trade policies involve an increased government role that future leftist Administrations will utilize to push "climate change" and "equity"-based activism. Focusing more on gross domestic product (GDP) growth than on median income, he writes that "people mistakenly believe that U.S. manufacturing and the U.S. economy are in decline" when in truth "American manufacturing output is currently at an all-time high." Meanwhile, we continue to experience "record-setting real GDP" despite our "long-run decline in manufacturing employment."

Lassman does not think that an aggressive U.S. trade policy would lead to more manufacturing jobs. Rather, he writes, "Federal Reserve research shows" that the

Trump Administration's steel tariffs, and the retaliatory tariffs levied by other nations in response, "have cost about 75,000 manufacturing jobs while creating only about 1,000 jobs in the steel industry." Furthermore, he writes that "protectionism and similar progressive policies tend to weaken American security." Lassman maintains that "trade creates peace," and if China weren't so reliant upon trade with the U.S., it would be "much more unstable and dangerous." He thinks American influence in China—"Internet memes, fashion, movies"—can "play a vital role in helping to turn China from an authoritarian threat into a freer and less hostile power."

Ultimately, Lassman believes that we should lower or repeal tariffs—including eliminating "the destructive Trump–Biden tariffs"—in order to make goods more affordable for Americans. He thinks free trade will improve our economy, enhance our national security, and keep future left-leaning Congresses from insisting that future left-leaning Presidents "negotiate for as many trade-unrelated provisions as possible to benefit labor and green constituencies."

Navarro disagrees with Lassman almost across the board. He writes, "Trade policy can and must play an essential role in an American manufacturing and defense industrial base renaissance," which he says is crucial to our country's future. But two forces in particular "are pushing America in the opposite direction." First, the World Trade Organization's (WTO) "most favored nation" rules encourage our trade partners to adopt high tariffs, which lead to our "chronic" trade deficits and make us "the globe's biggest trade loser and victim of unfair, unbalanced, and non-reciprocal trade." For example, Navarro writes, tariffs on imported automobiles are 2.5 percent in the U.S., 10 percent in the European Union, and 15 percent in China. Second, China's "economic aggression" in the form of "tariffs, nontariff barriers, dumping, counterfeiting and piracy, and currency manipulation" further weakens our "manufacturing and defense industrial base even as the fragility of globally dispersed supply chains has been brought into sharp relief by the COVID-19 pandemic."

In contrast to Lassman, Navarro thinks that "trade deficits matter a great deal." He writes that "offshoring not only suppresses the real wages of American blue-collar workers and denies millions of Americans the opportunity to climb up the rungs of the ladder to the middle class," but it also "raises the specter of a manufacturing and defense industrial base that, unlike our experience in World Wars I and II, will not be able to provide the weapons and matériel that would be needed should America enter another major world war." Also, China controls "much of the world's pharmaceutical production and supply chains." It is therefore essential, he writes, that our trade policy be guided by "the principle of reciprocity," whereby we coax other countries into lowering their trade barriers if possible and raise ours as necessary. Moreover, he says we should "decouple" our economy from China's.

China's goal, Navarro says, is "to shift the world's manufacturing and supply chains" to its soil, thereby strengthening its "defense industrial base and associated

warfighting capabilities." He writes, "Every year, more than 300,000 Communist Chinese nationals attend U.S. universities or are hired at U.S. national laboratories, innovation centers, incubators, and think tanks." Huawei, "an instrument of Chinese military espionage," is now partnering with UC Berkeley on research with "important future military applications." China is also engaged in what Warren Buffett calls "conquest by purchase," as it uses revenues from its trade surpluses "to buy American real estate, companies, and financial assets." In sum, Navarro believes our current trade policy enriches our allies and adversaries while hurting us, weakens our industrial base while strengthening China's, and shortchanges "Main Street manufacturers and workers." Such non-reciprocal "free" trade is slowly undermining our capabilities and our freedom.

A small component of trade policy involves the Export–Import Bank, and Jennifer Hazelton and Veronique de Rugy debate its merits in Chapter 23. In support of the bank, Hazelton writes, "EXIM provides financing only when the private sector will not." She says, "Export credit is a strategy weapon in China's whole-of-government approach to enhance its global power." China provided an estimated "$500 billion in export credit" in 2018, "approaching in that one year the total amount of financing EXIM has provided in its 90-year history." Hazelton argues that when large American companies can get a loan from EXIM rather than having to meet the demands of export credit agencies in Europe or elsewhere, it helps American small businesses, too. She writes that the U.S. "would be foolish to abandon this field of play."

Opposing the bank, de Rugy writes, "EXIM operates in effect as a protectionist agency that picks winners and losers in the market by providing political privileges to firms that are already well-financed." She denies it promotes exports and argues it hurts small businesses, which often have to compete against large businesses that are able to get the loans. She writes that it also helps foreign companies, such as state-run China Air, that buy U.S. exports from American companies such as Boeing. The bottom line, she says, "is that the Bank should be abolished."

In Chapter 21, former assistant secretary of commerce Thomas F. Gilman describes the Department of Commerce as dominated by career staff who are uninterested in implementing the President's priorities. The department clearly needs far more political leadership, including at the Census Bureau, as Gilman notes. The Census Bureau, unlike much of the federal government, has a constitutionally required mission. Yet the 2020 Census was at least somewhat compromised by overly risk-averse COVID policies that prevented census field representatives from going door-to-door for much of that year. The Census Bureau's website, one of the worst in the federal government, buries crucial statistics where only academics or advocates are likely to find them. In addition, Gilman writes that a new Administration should ensure that the Bureau of Economic Affairs, also housed at Commerce, "conducts its statistical analysis in a consistent and objective manner."

Moreover, the International Trade Administration—which "is centrally placed to craft and implement U.S. trade policy"—should counter "the malign influence of China and other U.S. adversaries" and strongly "defend against trade violations."

In Chapter 22, William L. Walton, Stephen Moore, and David R. Burton note that under the Biden Administration, the Treasury Department has failed to achieve any of the agency's core objectives. Under the leadership of Secretary Janet Yellen, Treasury has placed "equity" and "climate change" among its top five priorities. The next Administration must act decisively to curtail activities that fall outside of Treasury's mandate and primary mission. Treasury must refocus on its core mission of promoting economic growth, prosperity, and economic stability. The authors add that "Treasury should make balancing the federal budget a mission-critical objective."

The authors propose legislation to reform the tax code, writing,

> Tax policy has a powerful impact on the economy. The Treasury Department should develop and promote tax reform legislation that will promote prosperity. To accomplish this, tax reform should improve incentives to work, save, and invest. This, in turn, is accomplished primarily by reducing marginal tax rates, reducing the cost of capital, and broadening the tax base to eliminate tax-induced economic distortions by eliminating special-interest tax credits, deductions, and exclusions. Tax compliance costs will decline precipitously if the tax system is substantially simplified. The Treasury Department should also promote tax competition rather than supporting an international tax cartel.

Chapter 22 includes proposals to reduce the intrusiveness and increase the accountability of the Internal Revenue Service.

The chapter also explains how the interagency Committee on Foreign Investment in the United States (CFIUS), chaired by Treasury, should realign its priorities to meet the United States' current foreign policy threats, especially from China. It explains how Treasury's Financial Crimes Enforcement Network, which manages the anti-money laundering/countering the financing of terrorism (AML-CFT) programs, can be improved to reduce the burden on small firms and improve the effectiveness of the AML-CFT regime.

In Chapter 25, Karen Kerrigan describes the Small Business Administration (SBA) as a "sprawling, unaccountable agency" replete with "waste, fraud, and mismanagement" and guilty of "mission creep." Moreover, its "initiatives aimed at 'inclusivity' are in fact creating exclusivity and stringent selectivity in deciding what types of small businesses and entities can use SBA programs." According to Kerrigan, the Office of Advocacy "is one of the bright spots within the SBA that a conservative Administration could supercharge to dismantle extreme regulatory

policies and advance limited-government reforms that promote economic freedom and opportunity." She recommends that it receive a big increase in funding and staffing and then undertake "a research agenda that includes measuring the total cost that federal regulation imposes on small businesses." This would be one important step in making sure that "the SBA under a conservative Administration would meet the needs of America's small-business owners and entrepreneurs, not special interests."

Former White House director of the domestic policy council Paul Winfree writes in Chapter 24 that the Federal Reserve actually causes "inflationary and recessionary cycles." He says, "A core problem with government control of monetary policy is its exposure to two unavoidable political pressures: pressure to print money to subsidize government deficits and pressure to print money to boost the economy artificially until the next election." The Fed has also added a "moral hazard" due to its "history of bailing out private firms when they engage in excess speculation." At a "minimum," Winfree writes, "full employment" should be eliminated from the Federal Reserve's mandate, "requiring it to focus on price stability alone." The Fed should not be allowed to incorporate "environmental, social, and governance factors into its mandate." It should be compelled "to specify its target range for inflation." Its last-resort lending practices, "which are directly responsible for 'too big to fail,'" should be curbed. Its mission, and alternatives to the Fed, should be explored by a commission created for that purpose. And a central bank digital currency, which "would provide unprecedented surveillance and potential control of financial transactions," should be rejected.

Even more ambitiously, Winfree suggests that the next Administration should think about proposing legislation that would "effectively abolish" the Federal Reserve and replace it with "free banking," whereby "neither interest rates nor the supply of money" would be "controlled by government." Free banking would produce a "stable and sound" currency and a "strong" financial system, "while allowing lending to flourish." Alternatively, Winfree writes, the next Administration should "consider the feasibility of a return to the gold standard."

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DEPARTMENT OF COMMERCE

Thomas F. Gilman

The Department of Commerce is charged with promoting economic growth, innovation, and competitiveness while providing the data that American businesses need to succeed. Intended to serve with clarity of purpose as the voice of business in any President's Cabinet, the Department of Commerce has suffered from decades of regulatory capture, ideological drift, and lack of focus. One long-standing joke maintains that the department, with its lack of coherence, is a holding company for the parts of the federal government that could not be housed elsewhere. Thus, in the 1990s, calls emerged to abolish the department and either spin off, zero-out, or consolidate its functions among other entities.[1]

At the same time, the department has a higher profile now than perhaps ever in its history. It possesses key tools to address decades of poor decision-making in Washington and is central to any plan to reverse the precipitous economic decline sparked by the Biden Administration and to counter Communist China. Both assertions can be equally true, that the department possesses the expertise, programs, and authorities that will be crucial to the success of a conservative presidency *and* that its role in the federal bureaucracy would benefit from streamlining and reform.

Many programs at the Department of Commerce overlap in whole or part with other governmental programs, and consolidating and streamlining these could increase both accountability and return on taxpayer investment. Any exercise in government-wide budgeting and reform should review the department with an eye toward consolidation, elimination, or privatization that examines the efficiency, effectiveness, and underlying philosophy of each individual component. Though

not an exhaustive set of proposals, the next conservative President should consider whether:

- The International Trade Administration (ITA) and parts of the Bureau of Industry and Security (BIS) should be streamlined and moved to the Office of the U.S. Trade Representative (USTR), along with the Development Finance Corporation; the U.S. Trade and Development Agency; the Export–Import Bank; and other trade-related programs spread across the federal government—as well as considering whether many of these programs should exist within the federal government;

- The Economic Development Administration's grant programs, which are among a broad set of duplicative and overlapping federal economic development grant programs, should be consolidated with other programs and/or eliminated;

- The Bureau of Economic Analysis and Census Bureau, as well as the Department of Labor's Bureau of Labor Statistics, should be consolidated into a more manageable, focused, and efficient statistical agency;

- The U.S. Patent and Trademark Office (USPTO) should be made into a performance-based organization under the Office of Management and Budget (OMB);

- Alternatively, the USPTO should be consolidated with the National Institute of Standards and Technology (NIST) in a new U.S. Office of Patents, Trademarks, and Standards, with all non-mission-critical research functions eliminated or moved to other, more focused, federal agencies; and

- The National Oceanographic and Atmospheric Administration (NOAA) should be dismantled and many of its functions eliminated, sent to other agencies, privatized, or placed under the control of states and territories.

Almost every element of the department can be viewed through this lens, but with today's political reality and multiple competing congressional committee jurisdictions, drastic structural change to the department is neither imminent nor likely. Thus, this chapter largely accepts the baseline of today's department and proposes a bold, but achievable, set of proposals for an incoming conservative Administration.

Whatever the imperfections of the Department of Commerce, it is blessed with many quality civil servants and strong statutory authorities that, directed properly,

can help ensure U.S. success in 2025 and beyond. With that in mind, this chapter focuses primarily on policy, strategy, and occasionally tactics that are either immediately implementable under strong leadership or are critical to mission success.

OFFICE OF THE SECRETARY

The Office of the Secretary (OS) is somewhat of a misnomer, as very few of the thousands of employees working in the office are dedicated to staffing the secretary and implementing Administration priorities. Rather, OS's budget and full-time equivalents have increasingly been allocated to fulfill financial, human resources, administrative, information technology, contracting, and facilities functions, using outdated and inefficient systems. The Trump Administration began implementing key changes, such as updating financial management tools, but more must be done to digitize and modernize the department's processes to free resources for secretarial and presidential priorities.

The above drain on resources leaves the Secretary of Commerce to rely upon a few dozen direct support staff, supplemented with detailees and indirect funding from each of the bureaus to execute the President's agenda and manage the diverse functions of the department. This structure empowers career staff in each bureau and makes it harder to mandate change. As such, it is vitally important that an incoming Administration fully staff OS with political appointees, send all existing detailees back to their home bureaus on Day One, and replace those detailees with trusted and knowledgeable career staff on an as-needed basis. Department of Commerce leadership should also fight to restore direct funding and additional political appointee positions to OS and its constituent parts involved in implementing and communicating the Commerce Secretary's and President's policy priorities.

Administration, Budget, and Appropriations. Recent practice has been for career staff to serve as gatekeepers between department leadership and external budget and appropriations partners at the OMB and on Capitol Hill. By serving not just as a central point of contact but as the sole staff-level communicators of departmental priorities, these career officials can, have, and will slow down—and even stop—changes in policy, even at the line-office level.

Although the following is true at all agencies, it is particularly important at the Department of Commerce that political leadership be immediately installed at the Office of the Chief Financial Officer (CFO) and Assistant Secretary for Administration (ASA), and that political appointees receive a mandate to communicate with external partners alongside career staff at every stage of the budget and appropriations process. Political appointees must also monitor internal CFO operations down to the operating division level to ensure that funds are not being diverted to programs that do not align with Administration priorities, as has regularly happened in years past.

Advisory Committees. Due to the nature of the Department of Commerce's portfolio, many of its advisory committees are populated by activists from organizations openly hostile to conservative principles who use the committees to impede conservative policy. Upon entering office, all such committees should be reviewed regarding whether they are required by statute and abolished if they are not. Membership of the remaining committees should be reconstituted to ensure they are sources of genuine expert advice and productive contributions to the policy-making process. Federal Advisory Committee Act (FACA) compliance and awareness of any ways the committees have been written into regulations should be considered.

INTERNATIONAL TRADE ADMINISTRATION

The International Trade Administration is centrally placed to craft and implement U.S. trade policy. Core to ITA's mission is the expansion of trade and investment and the fostering of job creation, innovation, and economic growth, while also providing research and analysis that support USTR's trade negotiations. ITA carries out this mission on behalf of American workers, ranchers, and families.

As discussed elsewhere, historically, conservatives have argued that many federal government trade and investment-oriented functions amount to corporate welfare or protectionism. There is a growing counterargument within the conservative movement contending that, in a world in which managed trade is the norm rather than the exception, and in which authoritarian governments, especially China, continually seek to undermine U.S. interests, the U.S. cannot unilaterally disarm. To do so would harm the cause of free trade in the long term, and, in any event, Congress is not likely to drastically change the composition or authorization of the ITA. Thus, a policy and management agenda that serves conservative priorities is crucial.

In a conservative Administration, the ITA should operate with the following priorities:

- Counter the malign influence of China and other U.S. adversaries;
- Enforce agreements vigorously and defend against trade violations;
- Secure access to critical supply chains and technology; and
- Enable the private sector to drive innovation and remain globally competitive.

It is important to note that a deeply entrenched set of career Senior Executive Service officials have managed the ITA for over a decade. While most are truly non-partisan civil servants, some are not. Political leadership must manage accordingly. Strong political leadership is needed in ITA's policymaking positions from

Day One to ensure the bureau is fully implementing Administration policy. An incoming Administration should ensure that Assistant Secretary and Deputy Assistant Secretary positions are staffed by appointees as quickly as possible.

Enforcement and Compliance. Strong enforcement of trade agreements is an indispensable function of the ITA carried out by Enforcement & Compliance (E&C). Free and fair trade is impossible without energetic enforcement of existing agreements and without strong defense against dumping and illegal subsidies.

Many free trade advocates consider antidumping and countervailing duty laws (AD/CVD) to be protectionist and thus antithetical to the conservative free market position. In their view, AD/CVD laws are overused, abused by certain industries, and harmful to American economic competitiveness by increasing costs to downstream industries.

Other conservatives maintain that AD/CVD tariffs are not conventional tariffs, but rather corrective actions meant to address anti-free market activities by other governments—a scalpel, not a hammer. In the short term, this may mean higher costs for U.S. businesses and consumers on a limited number of products from certain offending countries, but those higher prices correct existing price distortions in the marketplace and ultimately ensure the healthy operation of market forces in the long term and a level playing field for U.S. manufacturers.

Whatever the case, improvements to the current system must be made to *both* protect U.S. consumers and companies from improperly applied duties *and* defend against trade-distorting actions by other governments. Procedures governing the day-to-day administration of proceedings, as well as policies driving critical decisions in proceedings, require a fresh look. Ultimately, E&C's mandate is to conduct a rigorous but also fair, objective, and balanced review of the record in each proceeding and to make decisions without bias.

It is exceedingly unlikely that Congress would abolish or limit the activity of E&C. Therefore, the proposals below are made under the assumption that an incoming Administration will operate E&C within its current legal, institutional, and political confines and set a path forward to wield E&C's considerable power to achieve the goals of a conservative Administration. These proposals can be broken into three categories: process, policy, and addressing China.

Process

- Re-establish and expand suspended in-person pandemic-related verifications, particularly regarding the People's Republic of China. Ensure that verifications are rigorous.

- Implement advanced analytics and artificial intelligence to identify opportunities for self-initiation, detect circumvention, and prevent bad actors from gaming the system.

- Accelerate front-end work on reviews as opposed to constantly pushing against statutory deadlines.

- Work with Customs and Border Protection (CBP) and other relevant agencies to address circumvention and duty evasion, and promote policies that encourage full duty collection to ensure the integrity of AD/CVD and circumvention orders.

- Work with CBP, the Department of Justice, the Department of Treasury, and other relevant agencies to aggressively pursue importers of record and other beneficiaries for unpaid duties, and consider policy changes to reduce uncollected duties in the future.

- Work, pursuant to the above, with interagency partners in AD/CVD cases to either require foreign importers of record (IORs) to make cash deposits far in excess of established duty rates at the time of entry of AD/CVD merchandise, require IORs to register sufficient U.S. assets to ensure timely payment of duties, or otherwise prohibit IORs from importing AD/CVD merchandise.

- Conduct a regulatory capture audit and put guardrails in place to address improper exercise of bureaucratic prerogative.

Policy

- Ensure senior policy and decision-making positions are always held by political appointees.

- Reverse the practice of giving the benefit of the doubt to foreign companies versus U.S. companies in AD/CVD proceedings.

- Establish a policy for addressing companies that invest heavily in the U.S. and thus have large import volumes, exposing them to AD/CVD petitions.

- Establish an effective, fair, and objective process for self-initiation of AD/CVD proceedings when industry lacks the resources or ability to act.

Addressing China

- Revive the China-specific non-market economy unit.

- Provide transparency in the surrogate country list development process.

- Develop a new methodology to determine normal values in Chinese antidumping cases because—given China's size, economic might, and state intervention in the economy—there is no comparable surrogate country to use as a proxy for production costs.

In addition to these changes, continued support for steel and aluminum market analysis and import monitoring remains crucial to the U.S. defense industrial base and the health of global manufacturing. Without these functions, it is difficult to address massive subsidization, overcapacity, and dumping by China.

Industry and Analysis. Industry and Analysis (I&A) consists of a team of economists and industry experts that provides important analysis to partners across the government, including the White House and USTR, as well as the public.

As the Department of Commerce's Committee on Foreign Investments in the United States (CFIUS) lead, I&A performs crucial work to ensure that the proper economic impact/supply chain analysis is brought to national security risk assessments. This analysis is needed for CFIUS to be an effective tool in preventing China and other adversaries from exploiting the U.S.'s open investment climate.

I&A also provides impact assessments and economic modeling for policy options under Administration consideration; plays a critical role in identifying trade barriers and providing industry-specific expertise for USTR during free trade agreement (FTA) negotiations; and does indispensable work ensuring cross-border data flows, particularly with Europe, remain open and relatively unrestricted.

However, outside of these functions, implementation of I&A's mission as an intellectual engine for U.S. trade and investment policy can often lack energy and focus. For instance, the Top Market Reports that represent a large volume of I&A work do not serve a specific strategic function and could be better replaced by industry competitiveness assessments in critical sectors of the economy.

Strong and capable leadership is needed in I&A to ensure Administration priorities permeate the organization and that staff support Administration priorities. I&A produces a mandatory report to Congress regarding the Miscellaneous Tariff Bill, which focuses solely on U.S. capacity in the goods being considered for tariff exclusions and does not include highly relevant information on capacity among FTA partners and close allies. The resulting final report has thus been used to lobby for tariff reductions on thousands of imports from China without concern for any other factors. This lack of priority given to FTA partners is troubling.

Going forward, I&A should be permanently restructured to perform supply-chain analysis on an ongoing basis for the U.S. government, identifying potential vulnerabilities like those exposed by the pandemic and resulting shortages in everything from semiconductors to baby formula. Furthermore, permanent standing teams should be established and staffed by properly aligned political appointees and trusted career staff to analyze and spur action on the following priority policy issues:

- Strategic decoupling from China;
- Defense industrial base strength;
- Critical supply chains (e.g., pharmaceuticals, medical devices, food); and
- Emerging technologies (e.g., rare earth minerals, semiconductors, batteries, artificial intelligence, quantum computing).

Global Markets and the U.S. and Foreign Commercial Service. For more than a decade, strategic planning at Global Markets (GM) and the U.S. and Foreign Commercial Service (CS) has been consistently undermined by increased costs associated with overseas staff and flat or reduced budgets. The Trump Administration introduced crucial, long-overdue business practices such as the implementation of software to manage and track workflow, but a further strategic overhaul of resource allocation is needed to set GM and the CS on a firm footing.

Currently, CS manages staff spread over 106 domestic offices in 77 countries around the world. Abroad, several "partner posts" utilize interagency staff and regionally located CS officials to offer services without a permanent physical in-country CS presence. Given the rapidly rising costs imposed by the State Department on CS posts overseas, a drastic expansion of this model is likely needed.

CS resources should be distributed according to the following set of priorities:

- Value in countering the malign influence of adversaries, particularly China;
- Value in fostering U.S. innovation;
- Value in maintaining access to critical supply chains and technology;
- Difficulty for U.S. companies in gaining market access without CS involvement; and
- Potential untapped export market size and likelihood of expansion.

Ultimately, difficult decisions must be made about the value of CS posts and whether individual posts can be justified given current resources and the above criteria. If the State Department deems the diplomatic value of a permanent in-country CS post to be vital to the national interest, then State should bear more of the cost of maintaining that post.

Global Markets should also consolidate and elevate the Advocacy Center and SelectUSA as relatively low-cost tools to drive large-scale export transactions

and foreign direct investment (FDI). SelectUSA is a low-cost and effective tool in attracting FDI to the U.S. and to re-shore manufacturing and research and development. In a world in which corruption is rampant, these are among the most effective tools in leveling the playing field for U.S. communities and companies seeking to engage with governments and potential overseas investors.

Given the value placed on senior-level engagement by many governments and companies, this consolidated Office of Trade and Investment Advocacy should be headed by a Deputy Assistant Secretary. The new office should also seek congressional authorization to utilize its FDI-promotion tools to encourage reshoring by U.S. businesses.

BUREAU OF INDUSTRY AND SECURITY

During the past two decades, technology transfer from America and its allies has helped accelerate adversaries' technological and weapons capabilities. This technology transfer on a massive scale has occurred because of adversaries' exploitation of the U.S.'s open economy and education system through both commercial transactions and university and government research programs. Examples include the People's Republic of China's dramatic leaps forward in semiconductor design and fabrication, battery energy storage, nuclear weapons capabilities, artificial intelligence, space and aerospace engineering, and hypersonic weapons deployment.

At the same time, the U.S. has systematically failed to protect critical assets. Rather than promulgate policies to better prevent technology transfer, the U.S. government has either ignored the problem or, worse, from 2008 through 2016 instituted a government-wide "Export Control Reform" process to loosen the Export Administration Regulations (EAR) governing exports of dual-use items to facilitate technology transfer to adversaries, either directly or indirectly through third-country transfers.

Those reforms still present in the Department of Commerce's EAR must be reversed. The United States needs stronger rules to protect technology transfer to adversaries while promoting technology integration and interoperability with allies. Further, U.S. export control regulations should be utilized to prevent theft of personally identifiable information and to encourage U.S. companies to shift production out of China and further diversify their supply chains to better advance U.S. national security interests.

For all the below recommendations, BIS needs to move unilaterally while it works with allies to implement complementary export control policies. Waiting to act until allies are ready to move in lockstep is not an option while America's national security is at risk.

Emerging and Foundational Technologies. The Export Control Reform Act of 2018 (ECRA) gave BIS permanent statutory authority to regulate exports of dual-use items (goods, software, and technology). ECRA also mandated that BIS

regulate exports of emerging and foundational technologies. Although the scope of such technologies is vast, to date BIS has only controlled just over 40 of these technologies. This does not meet the clear statutory intent of Congress that ECRA be leveraged to ensure that the United States maintains a technological advantage in technologies bearing upon national security interests.

Currently, BIS self-identifies technologies that merit control under the EAR with minimal input from other federal agencies. This mechanism should be improved. BIS should create an open, transparent rulemaking process by which any industry participant, private entity, or branch of the government may, at any time, submit nominations for emerging/foundational technologies for control. Then, on a quarterly basis, BIS should make public such recommendations (while holding the identity of the submitter confidential) for public input, followed by an explanation about its ultimate decision to control or not control the items, its reasons, the level of controls applied (stringent or permissive), and the relevant Export Control Classification Number (ECCN) under the Commerce Control List. Commerce should also institute a mechanism whereby its decisions can be challenged, including on a confidential basis.

Licensing Procedures: Adjudication and Transparency. Currently, if the Departments of Defense, State, Commerce, and Energy disagree on an export license decision, the disagreement may be escalated to the Operating Committee—and subsequently to the Advisory Committee on Export Policy led by BIS's Assistant Secretary for Export Administration. The Assistant Secretary does not need to lead the dispute resolution, and this process should be revised by giving lead authority to BIS's Under Secretary, who is better able to account for diverging views.

Moreover, BIS's authority to overrule other agency votes should be changed. Each agency should have one equal vote and, if a licensing dispute remains unresolved, the final decision should be elevated to the National Security Advisor and the Secretaries of Defense, State, Commerce, and Energy.

Additionally, to improve congressional oversight of BIS's license adjudication process, BIS should provide specific congressional committees with data from the Automated Export System on a quarterly basis. Electronic files should contain U.S. exporter by name; product description (e.g., harmonized system code and ECCN/U. S. Munitions List designation); end user and destination country; and when a license was required, whether the license was granted or denied. *BIS currently denies just 1.2 percent of export licenses.* These data reporting requirements can help Congress better determine whether BIS is adequately protecting national security through appropriate use of export controls or whether additional direction from Congress is required.

Improve End-Use Checks. The integrity of the export control system may be validated only through adequate end-use checks. BIS must deny export licenses to countries that do not permit adequate end-use checks (e.g., China/Russia) by U.S. authorities. BIS should also strengthen the forensic audit capabilities of its

Export Enforcement officers through improved and frequent training so they are able to detect export-control violations.

EAR Revisions. The U.S. Government needs a new export control modernization effort to tighten the EAR policies governing licenses to countries of concern, including China and Russia (specifically, revise and/or reverse the 2008 through 2016 policies).

When authoritarian governments explain what they plan to do, believe them unless hard evidence demonstrates otherwise. Case in point: China's and Russia's stated civil–military fusion policies demand central government command-and-control style systems in which every private entity serves the interests of the state and is forced to provide technology, services, capacity, and data to the central government and the military. Through this structure, commercial activities are routinely weaponized by authoritarian regimes that repeatedly identify the U.S. as an enemy. Accordingly, U.S. export control policies must be updated to reflect these realities and the associated threats to national security.

Key priorities for EAR modernization for countries of concern should be:

- Eliminating the "specially designed" licensing loophole;
- Redesignating China and Russia to more highly prohibitive export licensing groups (country groups D or E);
- Eliminating license exceptions;
- Broadening foreign direct product rules;
- Reducing the *de minimis* threshold from 25 percent to 10 percent—or 0 percent for critical technologies;
- Tightening the deemed export rules to prevent technology transfer to foreign nationals from countries of concern;
- Tightening the definition of "fundamental research" to address exploitation of the open U.S. university system by authoritarian governments through funding, students and researchers, and recruitment;
- Eliminating license exceptions for sharing technology with controlled entities/countries through standards-setting "activities" and bodies; and
- Improving regulations regarding published information for technology transfers.

The next few years will prove or disprove the assertion that the U.S. stands on the precipice of a Cold War with China. Many believe that a Cold War has already begun; if so, then strategic decoupling from China is necessary and, fundamentally, any exports of goods, software, and technology to countries of concern, whether directly or indirectly, should be prohibited or controlled in the absence of good cause (e.g., humanitarian and medical aid, food aid).

Entity List and Sanctions. There are currently just over 500 Chinese and over 500 Russian companies on the Department of Commerce's Entity List, which regulates exports of controlled and uncontrolled items to designated entities. Given China's Civil–Military Fusion Strategy and Russia's massive war efforts facilitated by a broad range of the Russian economy, BIS must add more entities to the Entity List and apply a license review "policy of denial" that prohibits exports to these entities.

Entity List parties that violate export controls should be placed on the BIS Denied Persons List (and thereby lose export privileges) and, if the violations are significant enough, they should also be sanctioned by the Department of Treasury.

Data Transfer and Apps Used for Surveillance. Department of Commerce leadership should work across government agencies to address privacy and data concerns arising out of "big tech" from national security and export control perspectives. In particular, they should draft and implement an executive order (EO) based on the International Emergency Economic Powers Act, which expands export control authority beyond ECRA's scope (goods, software, technology) to regulate and restrict exports of U.S. persons' data to countries of concern. The EO should establish a framework for the types of personal data subject to export controls and licensing policy by country, and the BIS should implement the EO through regulations.

BIS should additionally designate app providers (such as WeChat and ByteDance/TikTok) known for undermining U.S. national security through data collection, surveillance, and influence operations, to the Entity List. This listing would prevent app users from program updates, which would quickly make these apps non-operational in the United States.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Break Up NOAA. The single biggest Department of Commerce agency outside of decennial census years is the National Oceanic and Atmospheric Administration, which houses the National Weather Service, National Marine Fisheries Service, and other components. NOAA garners $6.5 billion of the department's $12 billion annual operational budget and accounts for more than half of the department's personnel in non-decadal Census years (2021 figures).

NOAA consists of six main offices:

- The National Weather Service (NWS);

- The National Ocean Service (NOS);
- The Oceanic and Atmospheric Research (OAR);
- The National Environmental Satellite, Data and Information Service (NESDIS);
- The National Marine Fisheries Service (NMFS); and
- The Office of Marine and Aviation Operations and NOAA Corps.

Together, these form a colossal operation that has become one of the main drivers of the climate change alarm industry and, as such, is harmful to future U.S. prosperity. This industry's mission emphasis on prediction and management seems designed around the fatal conceit of planning for the unplannable. That is not to say NOAA is useless, but its current organization corrupts its useful functions. It should be broken up and downsized.

NOAA today boasts that it is a provider of environmental information services, a provider of environmental stewardship services, and a leader in applied scientific research. Each of these functions could be provided commercially, likely at lower cost and higher quality.

Focus the NWS on *Commercial* Operations. Each day, Americans rely on weather forecasts and warnings provided by local radio stations and colleges that are produced not by the NWS, but by private companies such as AccuWeather. Studies have found that the forecasts and warnings provided by the private companies are more reliable than those provided by the NWS.[2]

The NWS provides data the private companies use and should focus on its data-gathering services. Because private companies rely on these data, the NWS should fully commercialize its forecasting operations.

NOAA does not currently utilize commercial partnerships as some other agencies do. Commercialization of weather technologies should be prioritized to ensure that taxpayer dollars are invested in the most cost-efficient technologies for high quality research and weather data. Investing in different sizes of commercial partners will increase competition while ensuring that the government solutions provided by each contract is personalized to the needs of NOAA's weather programs.

The NWS should be a candidate to become a Performance-Based Organization to better enforce organizational focus on core functions such as efficient delivery of accurate, timely, and unbiased data to the public and to the private sector.[3]

Review the Work of the National Hurricane Center and the National Environmental Satellite Service. The National Hurricane Center and National Environmental Satellite Service data centers provide important public safety and

business functions as well as academic functions, and are used by forecasting agencies and scientists internationally. Data continuity is an important issue in climate science. Data collected by the department should be presented neutrally, without adjustments intended to support any one side in the climate debate.

Transfer NOS Survey Functions to the U.S. Coast Guard and the U.S. Geological Survey. Survey operations have historically accounted for almost half the NOS budget. These functions could be transferred to the U.S. Coast Guard and U.S. Geological Survey to increase efficiency. NOS' expansion of the National Marine Sanctuaries System should also be reviewed, as discussed below.

Streamline NMFS. Overlap exists between the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. Overly simplified, the NMFS handles saltwater species while the Fish and Wildlife Service focuses on fresh water. The goals of these two agencies should be streamlined.

Harmonize the Magnuson–Stevens Act with the National Marine Sanctuaries Act. Under the auspices of NOS, marine sanctuaries (including no-fishing zones) are being established country-wide, often conflicting with the goals of the Magnuson–Stevens Act fisheries management authorities of NOAA Fisheries, regional fishery management councils, and relevant states.

Withdraw the 30x30 Executive Order and Associated America the Beautiful Initiative. The 30x30 Executive Order and the American the Beautiful Initiative are being used to advance an agenda to close vast areas of the ocean to commercial activities, including fishing, while rapidly advancing offshore wind energy development to the detriment of fisheries and other existing ocean-based industries.

Modify Regulations Implementing the Marine Mammal Protection Act and the Endangered Species Act. These acts are currently being abused at a cost to fisheries and Native American subsistence activities around the U.S.

Allow a NEPA Exemption for Fisheries Actions. All the requirements for robust analysis of the biological, economic, and social impacts of proposed regulatory action in fisheries are contained with the Magnuson–Stevens Act, the guiding Act for fisheries. NEPA overlays these requirements with onerous, redundant, and time-consuming process requirements, which routinely cause unnecessary delays in the promulgation of timely fisheries management actions. The Department of Commerce and the Council on Environmental Quality should collaborate to reduce this redundancy.

Downsize the Office of Oceanic and Atmospheric Research. OAR provides theoretical science, as opposed to the applied science of the National Hurricane Center. OAR is, however, the source of much of NOAA's climate alarmism. The preponderance of its climate-change research should be disbanded. OAR is a large network of research laboratories, an undersea research center, and several joint research institutes with universities. These operations should be reviewed with an aim of consolidation and reduction of bloat.

Break Up the Office of Marine and Aviation Operations and Reassign Its Assets to Other Agencies During This Process. The Office of Marine and Aviation Operations, which provides the ships and planes used by NOAA agencies, should be broken up and its assets reassigned to the General Services Administration or to other agencies.

Use Small Innovation Prizes and Competitions to Encourage High-Quality Research. Lowering the barriers of entry for startups and small businesses will also provide greater innovation without excessive increases in spending. Reaching beyond traditional partnerships for innovative engagement tools that encourage entrepreneurial innovation will allow NOAA's research programs to adapt more quickly to the world's changing needs. Multiple competitions should take place in cities to attract a variety of innovators and investors to propel innovation forward in a way that benefits the needs of NOAA.

Ensure Appointees Agree with Administration Aims. Scientific agencies like NOAA are vulnerable to obstructionism of an Administration's aims if political appointees are not wholly in sync with Administration policy. Particular attention must be paid to appointments in this area.

Elevate the Office of Space Commerce. The Office of Space Commerce is the executive branch advocate on behalf of the U.S. commercial space industry. This office should be the vehicle for a new Administration to set a robust and unified whole-of-government commercial space policy that cements U.S. leadership in one of the most crucial industries of the future. The Office's current mission has been lost owing to its position within NESDIS, which sees no role for itself in advancing the industry and the space economy, including ensuring global competitiveness. OSC is, by law, the Department of Commerce's lead on space policy and must therefore link directly to all the bureaus and other organizations within the department. The Office needs to be returned to OS, within which it existed for the first two decades of its existence. From OS, the Office could serve as a coordinating entity for the whole-of-government commercial space policy desperately needed to secure America's place as the global leader in commercial space operations.

There presently exists no unified U.S. government policy on commercial space operations, with the Federal Communications Commission largely responsible for establishing space policy by default through its regulation of radio spectrum licenses. Now that routine space operations are commercially viable, it is critical that a new Administration establish reasonable government policies that ensure the U.S. will continue to be the flag of choice for commercial space activities. The President should, by executive order, direct the Office of Space Commerce, working with the National Space Council, to establish a whole-of-government policy for licensing and oversight of commercial space operations.

BUREAU OF ECONOMIC ANALYSIS AND THE OFFICE OF THE UNDERSECRETARY FOR ECONOMIC AFFAIRS

The Office of the Under Secretary for Economic Affairs is charged with conducting economic analysis, promoting business and commerce, guiding data-driven decision-making and evidence-building activities, and increasing access to government data while ensuring privacy and confidentiality. The office coordinates economic analysis needs across the Department of Commerce, leads the department's initiatives and programs related to data, data policy, and data management, and provides policy direction and oversight for the Bureau of Economic Analysis (BEA) and the Census Bureau. In addition to the Under Secretary for Economic Affairs, key staff roles in the office include the Chief Economist and the Chief Data Officer.

The office could be an effective tool for a new Administration if it focuses its efforts on supporting the Department's mission to ensure the conditions for economic growth and opportunity—conducting economic analysis and producing data for key departmental policy initiatives, as well as working across agencies to support broader Administration goals. As the office charged with providing policy direction and oversight for BEA and the Census Bureau, new leadership should take an early and active role within both bureaus.

BEA is a federal statistical agency under the Office of the Undersecretary for Economic Affairs. BEA's mission is to promote a better understanding of the U.S. economy by providing timely, relevant, and accurate economic accounts data in an objective manner. BEA is responsible for producing economic indicators such as the U.S. gross domestic product (GDP), state and local GDP estimates, foreign trade and investment statistics, industry data, and consumer spending numbers.

The data produced by BEA are used by government and business decision-makers to understand the state of the nation's economy. A new Administration should ensure that BEA conducts its statistical analysis in a consistent and objective manner, with the Undersecretary for Economic Affairs taking a strong interest in BEA's operations and data products.

A new Administration should also study the feasibility of merging all statistical agencies (Census Bureau, Bureau of Economic Analysis, and the Department of Labor's Bureau of Labor Statistics, etc.) under one bureau to increase efficiency and better coordinate cross-departmental issues.

CENSUS BUREAU

The Census Bureau's core mission is to execute the executive branch's constitutional mandate to conduct a census every 10 years, but its activities have steadily grown and shifted to include the economic census, American Communities Survey, and further functions outside of its core mission.

An incoming conservative Administration should focus on three areas: day-to-day management, the decennial census, and other programs. Each of these will

need to be addressed at every stage of the transition and policy implementation process and will require that both committed political appointees and like-minded career employees are in immediately put in place to execute a conservative agenda. These will need to be placed both in the Census Bureau and in key department-level managerial positions, such as those in the CFO/ASA's office.

Day-to-Day Management

- **Command and control.** Strong political leadership is needed to increase efficiency and align the Census Bureau's mission with conservative principles. Personnel is key to ensuring that a new Administration can guide preparations for the 2030 census and oversee the continued operation of the Bureau's many surveys. To move bureaucracy on key priorities, appointed staff should be in place at the Bureau as early as feasible after a new President takes office. This will require the Office of Personnel Management to allocate additional political appointee positions to the Census Bureau.

- **Financial management, information technology, and human resources.** The new Administration must immediately conduct a review to identify ways to better control costs and reverse recent failures of investments intended to upgrade the financial management, information technology, and human resources systems of the Census Bureau.

- **Leveraging technology.** The Census Bureau should focus on continuing to incorporate technology into its day-to-day operations, as well as the execution of its surveys, to reduce costs and provide more accurate and timely data to the American public.

- **Prioritizing cybersecurity and protection of confidential information.** Because much of the data collected by the Census Bureau include personal and confidential information, a focus on protecting data and implementing proper data protocols is necessary to ensure compliance with the legal requirements of Title 13.

Decennial Census

- **Fully vet existing planning and budgeting from Day One.** Planning and budgets for the 2030 decennial census will be finalized in fall 2025, including many decisions on how to use, develop, and administer the count. An incoming Administration should immediately audit the lifecycle cost estimate (LCCE) for the 2030 census and conduct a new LCCE if necessary. This will ensure that budget requests are accurate and up-to-date and

allow the new Administration to understand the decennial process in greater detail.

- **Remove duplicative functions to increase efficiency.** As part of the above review, ensure the decennial operational plan eliminates current duplication among ongoing census operations (annual surveys, etc.) and decennial operations in information technology, human resources, etc. This overlap has been estimated to waste billions of dollars in the years leading up to each decennial census.

- **Review the partnership program.** This program, designed to promote responsiveness to the census by employing trusted voices in various communities, deserves careful scrutiny. A new Administration should work to actively engage with conservative groups and voices to promote response to the decennial census. Promoting response to the decennial census will ensure that the most accurate counts are conducted, leading to a more accurate apportionment of congressional representation and allocation of federal funds. In 2020, lack of conservative participation was one factor in an undercount in some areas of the country, affecting representation of certain states.

- **Add a citizenship question.** Despite finding that the Trump Administration's addition of the citizenship question to the 2020 decennial census violated the Administrative Procedures Act, the Supreme Court held that the Secretary of Commerce does have broad authority to add a citizenship question to the decennial census. Any successful conservative Administration must include a citizenship question in the census. Asking a citizenship question is considered best practice even by the United Nations. By law, the Census Bureau must deliver the decennial census subjects/topics to Congress three years before Census Day (in this case, by April 1, 2027). Questions must be presented to Congress two years before Census Day (April 1, 2028).

- **Review forthcoming changes to race and ethnicity questions.** The current Administration has announced its intent to change data collection methods regarding race and ethnicity by combining the two questions on the decennial questionnaire and increasing the number of available options. A new conservative Administration should take control of this process and thoroughly review any changes. There are concerns among conservatives that the data under Biden Administration proposals could be skewed to bolster progressive political agendas. Government data should be

unbiased and trusted—and an incoming conservative Administration should ensure that is the case. This work must be coordinated with the Office of Management and Budget, which governs federal data collection standards via its statistical directives.

- **Reevaluate all decennial census questions.** Determine how best to optimize use of the decennial census to determine whether current or additional questions provide added value in coordination with other departments that utilize the information. Overly intrusive questions or less crucial data should either be moved to another survey or removed from Census programs entirely.

Other Census Programs

- **The American Communities Survey.** After the decennial census, the next biggest statistical survey conducted by the Census Bureau is the American Communities Survey (ACS). As with the decennial census, each question should be carefully reviewed to ensure the data are useful and that the questions are not overly intrusive. There should be collaboration with other departments that use the information collected on these surveys (e.g., the Departments of Labor, Health and Human Services, Homeland Security, etc.) to determine how to optimize the use and collection of particular information.

- **The Economic Census.** This is the official five-year measurement of American business and the economy. The first Economic Census in a new Administration will take place in 2027 and have a major effect on federal spending and policy determinations. This survey collects business data that are a key input for ongoing government statistics such as BEA's GDP reports. As with the decennial census and ACS, it should be carefully examined to ensure the Economic Census is not overly intrusive. Additionally, the Census Bureau should work with other federal agencies to determine when data collection can be supplemented by industry and other federal business indicators.

- **Pulse surveys.** During the government's early response to the COVID-19 pandemic, the Census Bureau began experimental pulse surveys. These were designed to obtain data closer to real-time than typical census surveys. These data could be a useful tool to the Department of Commerce and other partners across government and provide a model for improving data collection techniques or reducing the overall footprint of the Census Bureau.

- **Supplemental Poverty Measure.** The Census Bureau should review the Supplemental Poverty Measure (SPM) to consider whether it provides an accurate measure for use by the Council of Economic Advisers and others. The findings from this review should also be taken into consideration when constructing the Current Survey and other supplemental surveys, so that the SPM can be better tracked on a trend basis and support better policy decisions over time. This information would be particularly helpful in determining how to combat homelessness in conjunction with Department of Health and Human Services programs.

- **Abolish the National Advisory Committee and reevaluate all other committees.** The Census Bureau National Advisory Committee on Racial, Ethnic, and Other Populations (NAC) was established by the Obama Administration in 2012 and rechartered by the Biden Administration in 2022. The committee is a hotbed for left-wing activists intent upon injecting racial and social-justice theory into the governing philosophy of the Census Bureau. The NAC should immediately be abolished by the incoming Administration. The NAC charter gives the Secretary of Commerce the authority to terminate the committee. Since the Secretary of Commerce established the NAC in 2012 under the FACA, the Secretary is authorized to terminate the NAC. The new Administration should also reevaluate and potentially abolish all non-statutory standing committees within the Census Bureau, including the Census Scientific Advisory Committee.

ECONOMIC DEVELOPMENT ADMINISTRATION

The Economic Development Administration (EDA) is charged with investing in local communities to encourage and enable growth and innovation in the private sector, with particular focus on distressed or underserved areas. Over time, it has also served as a distribution mechanism for emergency relief funds (e.g., Hurricane Maria and COVID-19).

In the Trump Administration, the EDA served an important role for the CARES Act. It successfully disbursed approximately $1.5 billion in funding beginning in May 2020 and throughout the COVID-19 pandemic. However, this task revealed EDA's shortcomings. On a capability level, EDA lacked the technical and financial systems and skills to disburse these funds in a compliant manner and required external contracts for advisory support to hire the personnel needed to accomplish its goals.

Historically, EDA was a small bureau with an annual budget for $350 million in Public Works grants annually. EDA's decision-making is decentralized to its six regional offices, which delayed the release of CARES Act funding by months. But more broadly, EDA is an impediment to coordinated campaigns that advance

Administration priorities. Rather than implementing the new Department Organization Orders required to put conservative governance in place, it would be more efficient to abolish EDA and reallocate its funding to other overlapping federal grant programs.

If that proves unachievable, as has historically been the case due to political considerations in Congress, EDA would benefit from:

- Consolidation of decision-making to the Assistant Secretary's office to better align funding with conservative political purposes. For example, funding initiatives in rural communities destroyed by the Biden Administration's attack on domestic energy production would be well within the scope of EDA's mission.

- Leveraging of the direct hire authorities established in the Trump Administration for special initiatives or disaster/recovery funding. Leaving these programs to entrenched career employees with their ties to the regional offices will do little to advance the conservative agenda.

- Continuation of disaster funding with better coordinated capabilities and decision-making in accordance with the points above (e.g., maintaining contract vehicles for staff augmentation as needed).

- Building on the initial success of Opportunity Zones, which incentivized over $75 billion in private sector investment in distressed communities by the end of 2020 with little up-front cost to the taxpayer.

MINORITY BUSINESS DEVELOPMENT AGENCY

The Minority Business Development Agency (MBDA) is the only federal agency solely dedicated to the growth and competitiveness of minority-owned businesses. The Minority Business Development Act of 2021 was signed into law as part of the Bipartisan Infrastructure Investment and Jobs Act. This legislation made MBDA a permanent federal agency, created a Senate-confirmed Under Secretary position, and expanded programs and outreach. The Act:

- Authorizes the creation of regional offices and rural business centers, increasing the number and scope of existing grant programs supporting MBDA business centers;

- Mandates grants to minority serving institutions to cultivate future generations of minority entrepreneurs; and

- Establishes a Minority Business Advisory Council to advise the Under Secretary on supporting minority-owned businesses.

MBDA was established in 1969 by President Richard Nixon under Executive Order 11458[4] as the Office of Minority Business Enterprise and the Advisory Council for Minority Business Enterprise. Its purpose was to strengthen and preserve minority business enterprises (MBEs) and to coordinate among MBEs and other groups such as state and local governments and trade associations. For over 50 years, the MBDA operated under executive order without clear congressional authorization, but was regularly recognized and promoted by every subsequent president, including Presidents Ronald Reagan and Donald Trump.[5]

MBDA has the appearance, on its face, of perpetuating racial bias by focusing on minority advancement rather than economic need or other criteria. This is why the Trump Administration proposed eliminating funding for the agency in 2017. Many conservatives ask why the government is funding this activity, which often amounts to business and management consulting services offered by private sector entities. Eventually, the Trump Administration changed course and proposed that MBDA continue to exist as a permanently authorized entity focused on policy rather than offering services. Despite this change, many conservatives understandably see MBDA as problematic on a philosophical level.

Nonetheless, Congress has spoken recently on this issue and is unlikely to change its position in the near term. In 2017, MBEs represented one-third of all U.S.-owned businesses, with almost 9 million employees, generating $1.7 trillion for the U.S. economy.[6] As such, a conservative Administration is best served by approaching MBDA as a tool to be leveraged in the fight to deliver economic opportunity to all Americans and to produce an economy centered on equal opportunity, free markets, innovation, and growth.

Conservative leadership at MBDA should focus the organization on:

- Conducting policy analysis on the benefit of free markets, the evils of socialism and Communism, and the destructive effect of taxes and regulations on minority businesses;

- Ensuring MBDA business centers operate efficiently with strict oversight of funding, clear metrics for success, and consequences for poor performance;

- Creating policy-level operational priorities geared toward private sector action over government action with public–private partnerships serving as a necessary middle ground;

- Establishing MBDA as a data and research clearinghouse for minority business enterprises and policymakers;
- Coordinating amongst Cabinet agencies, state and local government, and trade associations to best leverage resources and encourage growth and innovation; and
- Evaluating the harmful effects of unfair trade practices on minority-owned businesses and their employees.

U.S. PATENT AND TRADEMARK OFFICE

The U.S. Patent and Trademark Office carries out a core constitutional mandate from Section 8, Article 1: "The Congress shall have Power...[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Strong intellectual property (IP) protections form the bedrock of American business and are a key factor in making the U.S. economy the most innovative in the world. As such, a conservative Administration must constantly work to strengthen IP rights and combat the incorrect view that strong IP rights somehow limit innovation.

Political leadership in a new conservative Administration should:

- Support like-minded countries as candidates for leadership in the World Intellectual Property Organization and build strong relationships with international partners to strengthen intellectual property rights.
- Re-examine patent eligibility requirements in Section 101 of the Patent Act[7] and support internal and/or legislative reforms to enable U.S. leadership in critical and emerging technologies such as quantum computing, 5G, and artificial intelligence.
- Take a balanced approach to the Patent Trial and Appeal Board and prioritize rapid and transparent processing of applications and appeals.
- Work with Administration partners and Congress to find and punish trademark infringers and counterfeiters.
- Oppose efforts to provide intellectual property waivers for cutting-edge technologies, including for COVID-19 vaccines and therapeutics, through the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights agreement or any other mechanism.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

The National Institute of Standards and Technology is charged with promoting U.S. innovation and competitiveness by "advancing measurement science, standards, and technology."[8] NIST carries out cutting edge research, helps industry establish standards and best practices, and is the nation's foremost authority on measurements. NIST's atomic clock, for instance, maintains the official time of the United States.

An incoming Administration should evaluate the federal government's civilian research footprint and consolidate those functions while ensuring that any research conducted with taxpayer dollars serves the national interest in a concrete way in line with conservative principles. Beyond this, an incoming Administration should:

- **Privatize the Hollings Manufacturing Extension Partnership.** The Hollings Manufacturing Extension Partnership (MEP) establishes and manages a network of centers focused on advising small- and medium-sized manufacturers in order to improve processes and thereby strengthen the U.S. industrial base. When Congress created the program, MEP centers were intended to transition to self-sustaining private institutions after using government funds to begin operations, but the prohibition on long-term funding was abolished in 1998. MEP's business advisory services would be more properly carried out by the private sector. The next Administration should propose legislation to zero out this $150 million program and fully privatize existing MEP centers.

- **Transfer the Baldridge Performance Excellence Program.** This program's "process" assists companies in improving management and operations, a function more properly and effectively carried out by the private sector. This program operates at a cost to taxpayers, despite thousands of dollars in fees charged to each participating company or entity and long-term plans to make the program self-sufficient. Maintenance and operation of the program should be entirely handed over to the Baldridge Award Foundation to be run by non-government staff via fees.

- **Increase value to taxpayers.** NIST should reinvigorate the Technology Transfer and ROI (return on investment) initiatives begun under the Trump Administration. These initiatives help speed the process of commercializing science funded by the federal government.

- **Reestablish U.S. dominance in international standards.** NIST should explore ways to incentivize broader U.S. participation in standards-setting bodies and the exclusion of participants from adversaries like China. Standards are set to facilitate trade in countries that utilize those standards: Countries

that do not allow open access to their markets should not be setting the standards for markets that do allow open access. The incoming Administration should consider increased government-sponsored participation by private companies and government employees with relevant expertise.

NATIONAL TELECOMMUNICATIONS AND INFORMATION SERVICE

The independent National Telecommunications and Information Service (NTIS) is charged with ensuring that federally funded research and data are accessible to the public. NTIS operates through user fees but is largely obsolete due to modern usage of the internet by federal agencies and researchers. NTIS's functions should be moved to NIST and consolidated with the Tech Transfer and ROI initiatives.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

The National Telecommunications and Information Agency (NTIA) is the executive branch's statutory lead on telecommunications and information policy. It focuses on broadband access, spectrum utilization, and other issues that are crucial to the high-tech economy. For decades, NTIA has suffered from organizational malaise and will require strong and energetic leadership by political appointees to implement conservative policies. The next Administration will face the primary challenge of rapidly deploying 5G without compromising other priorities. Further recommendations include:

- **Support free speech and hold big tech accountable.** Immediately conduct a thorough review of federal policy regarding free speech online and provide policy solutions to address big tech's censorship of speech.
- **Utilize new tools to eliminate threats to national security.** Fully implement the Trump Administration's Information and Communications Technology and Services (ICTS) Executive Order authorities in a way that ensures long-term success and the legal viability of this new national security tool.[9]
- **Expand utilization of federal spectrum.** Begin short term, temporary leasing of government allocated spectrum to ensure optimum utilization while preserving federal agency use rights.
- **Support the commercial space industry.** Advocate for licensing decisions at the Federal Communications Commission that continue to enable U.S. dominance in the commercial space industry.

- **Defend U.S. interests in international bodies.** Strong representation at the International Telecommunication Union should protect the interests of both private and government users of spectrum. The U.S. has differing needs from many other countries, for instance, because of U.S. government satellites and commercial space industry. NTIA should work with the U.S. delegation to ensure maximum adoption of the U.S. position.

- **Set fresh priorities in broadband grant programs.** Reevaluate broadband grant programs and, when possible, establish Administration priorities in how each grant is structured. First and foremost, widespread deployment of infrastructure is needed for 5G adoption in rural and exurban areas, which will be a key factor in future economic competitiveness for these under-served communities.

- **Review FirstNet.** Evaluate the performance and long-term value proposition of FirstNet in view of modern technologies that will render it obsolete.

CONCLUSION

The above policies, strategies, and tactics will set a new Administration on firm footing that allows the Department of Commerce to assist the President in implementing a bold agenda that delivers economic prosperity and strong national security to the American people. While many of the department's functions fall outside the remit of the federal government, its unique authorities in diverse areas provide critical tools that can and should be brought to bear in implementing a conservative governing philosophy that keeps Americans safe and provides opportunity for all.

AUTHOR'S NOTE: This chapter includes invaluable input from over a dozen alumni of the Department of Commerce and numerous other members of the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but James Rockas, Nazak Nikakhtar, Louis Heinzer, Robert Burkett, Iain Murray, Michael Gonzalez, David Legates, and Kristen Eichamer deserve special recognition. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

ENDNOTES

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DEPARTMENT OF THE TREASURY

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INTRODUCTION

The U.S. Treasury Department has a broad regulatory and policy reach. The next Administration should make major policy changes to: (1) reduce regulatory impediments to economic growth that reduce living standards and endanger prosperity; (2) reduce regulatory compliance costs that increase prices and cost jobs; (3) promote fiscal responsibility; (4) promote the international competitiveness of U.S. businesses; and (5) better respect the American people's due process and privacy rights.

These goals should be accomplished through: executive action (primarily treasury orders and treasury directives) and departmental reorganization; rulemakings; promoting constructive policies in Congress; actions in international organizations; and treaties.

The primary subject matter focus of the incoming Administration's Treasury Department should be:

- Tax policy and tax administration;
- Fiscal responsibility;
- Improved financial regulation;
- Addressing the economic and financial aspects of the geopolitical threat posed by China and other hostile countries;

- Reform of the anti-money laundering and beneficial ownership reporting systems;
- Reversal of the racist "equity" agenda of the Biden Administration; and
- Reversal of the economically destructive and ineffective climate-related financial-risk agenda of the Biden Administration.

BIDEN ADMINISTRATION TREASURY DEPARTMENT

The Biden Administration Treasury Department has failed badly in achieving every one of the agency's core objectives. The financial affairs of the nation have seldom been in worse condition, with the national debt expanding by more than *$4 trillion* in Biden's first two years in office. No President in modern times—perhaps ever—has been more fiscally reckless than has the Biden Administration.

The soundness and stability of U.S. currency, the dollar, has been put at risk because of the worst inflation in four decades. American families have been made poorer by Biden's economic strategy of taxing, spending, borrowing, regulating, and printing money. The average family has seen real annual earnings fall about $6,000 during the Biden Administration.[1] In 2022, the average American's 401(k) plan dropped in value from $130,700 to $103,900—more than 20 percent.[2]

Why has the Biden Administration failed to achieve virtually all components of its mission? Under the leadership of Treasury Secretary Janet Yellen, the department has made "equity" and "climate change" among its top five priorities. The next Administration must act decisively to curtail activities that fall outside Treasury's mandate and primary mission. Treasury must refocus on its core missions of promoting economic growth, prosperity, and economic stability.

For a clear statement of Treasury's mission drift, one need look no further than Secretary Yellen's introduction in the Treasury Department's *Fiscal Year 2022–2026 Strategic Plan*:

> We will have to address the structural problems that have plagued our economy for decades: the decline in labor force participation, income and racial inequality, and serious underinvestment in crucial public goods like childcare, education, and physical infrastructure. And then there are rising challenges, like climate change, which, left unchecked, will undermine every aspect of our economy from supply chains to the financial system.[3]

Treasury's mission drift into a "woke" agenda, is exemplified in a comparison of Domestic Finance's changed responsibilities from 2015 to 2023:

> [2015] Domestic Finance works to preserve confidence in the U.S. Treasury securities market, effectively manage federal fiscal operations, strengthen financial institutions and markets, promote access to credit, and improve financial access and education in service of America's long-term economic strength and stability.[4]

> [2023] Domestic Finance works to support equitable and sustainable economic growth and financial stability through policies to increase the resilience of financial institutions and markets and financial wellbeing of consumers, and to increase access to credit for small businesses and low-to-moderate income communities.[5]

TREASURY DEPARTMENT ORGANIZATION

The Treasury Department is one of the few executive agencies recognized in the U.S. Constitution. It states:

> No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.[6]

The Treasury Department was established by statute in 1789. Today, it is responsible for financing the federal government, promoting economic prosperity, and ensuring the financial security of the United States. In fiscal year 2022, Treasury received discretionary appropriations of approximately $16.4 billion.[7] It also has highly variable "mandatory" expenses (COVID-related CARES Act spending, for example).

In fiscal year (FY) 2022, Treasury employed approximately 96,000 full-time employees, including approximately 81,000 at the Internal Revenue Service (IRS).[8] Approximately four-fifths of Treasury's discretionary funds are used for IRS operations. The remaining amounts are for its offices, bureaus, and international assistance programs.

Treasury is organized into various departmental offices,[9] seven bureaus,[10] and four inspectors general.[11]

Departmental Offices. Departmental offices are composed of divisions headed by under-secretaries and assistant secretaries who are primarily responsible for policy formulation and overall management of the Treasury Department.

Domestic Finance is run by the Under Secretary for Domestic Finance, to whom the assistant secretaries for financial markets, financial stability, financial institutions and the fiscal assistant secretary report. Additionally, the Financial Stability Oversight Council (FSOC) Secretariat and the Office of Financial Research report to the Under Secretary for Domestic Finance.

Terrorism and Financial Intelligence. Terrorism and Financial Intelligence (TFI) was created in 2004 as part of the larger reorganization of the U.S. government to promote homeland security following the 9/11 terrorist attacks. TFI is charged with the mission of disrupting international financial support for terrorists, weapons of mass destruction proliferation, narcotics trafficking, money laundering, and other national security threats. It is also responsible for implementing and enforcing economic sanctions programs and supporting the wider law enforcement community in investigating financial crimes. It is led by the Under Secretary for Terrorism and Financial Intelligence.

International Affairs protects and supports U.S. economic prosperity and national security by working to foster the most favorable external environment for sustained employment and economic growth in the United States. The most crucial functions of the Office of International Affairs relate to managing the U.S.–China Strategic Dialogue; representing U.S. interests in the World Bank, International Monetary Fund (IMF) and other multilateral development banks; and overseeing the Committee on Foreign Investment in the U.S. (CFIUS). It is led by the Under Secretary for International Affairs.

Tax Policy formulates and develops tax policies and programs and works with Congress to get them passed into law. It reviews and issues regulations drafted by attorneys from the IRS's Office of Chief Counsel to administer the Internal Revenue Code, negotiates tax information exchange agreements with the tax authorities of foreign governments, participates in international tax organizations, and provides economic and legal policy analysis for domestic and international tax policy decisions. This office also provides revenue estimates for the President's budget. It is led by the Assistant Secretary for Tax Policy.

Economic Policy reports on current and prospective economic developments and assists in the determination of appropriate economic policies. This office is responsible for the review and analysis of domestic economic issues and developments in financial markets.

The Treasurer of the United States is a statutory office that has been assigned varying duties in recent Administrations. In addition to performing public outreach, treasurers have at times headed Treasury's financial education program and overseen the U.S. Mint and Bureau of Engraving and Printing.

Four Inspectors General provide independent audits, investigations, and oversight of Treasury and its programs: The Office of the Inspector General of the Department of Treasury; Treasury Inspector General for Tax Administration; Special Inspector General for the Troubled Asset Relief Program; and the Special Inspector General for Pandemic Recovery.

Treasury Bureaus. Seven Treasury Department bureaus comprise 98 percent of the Treasury work force and are responsible for carrying out specific operations assigned to the department.

The Alcohol and Tobacco Tax and Trade Bureau collects federal excise taxes on alcohol, tobacco, firearms, and ammunition, and is responsible for enforcing and administering laws covering the production, use, and distribution of alcohol products.

The Internal Revenue Service is the largest of the department's bureaus, accounting for about 85 percent of Treasury's personnel and about four-fifths of its appropriated budget. It administers and enforces U.S. tax laws.

The Bureau of Engraving and Printing develops and produces U.S. currency notes.

The Financial Crimes Enforcement Network (FinCEN) is designed to protect the financial system from illicit use. It also administers the beneficial ownership reporting regime mandated by the Corporate Transparency Act.[12]

The Bureau of the Fiscal Service provides central payment services to federal program agencies, operates the U.S. government's collections and deposit systems, provides government-wide accounting and reporting services, manages the collection of delinquent debt owed to the U.S. government, borrows the money needed to operate the government through the sale of U.S. Treasury securities (including the state and local government series), and accounts for and services the public debt.

The United States Mint designs and mints U.S. circulating and bullion coins.

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises national banks and federal savings associations (thrifts) to ensure that they operate in a safe and sound manner, provide fair access to financial services, and comply with applicable laws and regulations. The OCC also supervises federal branches and agencies of foreign banks and has rulemaking authority for all savings associations.

TAX POLICY

Tax policy has a powerful impact on the economy. The Treasury Department should develop and promote tax reform legislation that will promote prosperity. To accomplish this, tax reform should improve incentives to work, save, and invest. This, in turn, is accomplished primarily by reducing marginal tax rates,[13] reducing the cost of capital[14] and broadening the tax base to eliminate tax-induced economic distortions by eliminating special-interest tax credits, deductions, and exclusions. Tax compliance costs will decline precipitously if the tax system is substantially simplified.[15] The Treasury Department should also promote tax competition rather than supporting an international tax cartel.

Principles of Good Tax Policy. These are the principles governing good tax policy.

- First, the tax system should raise the revenue necessary to fund a limited government for constitutionally appropriate activities. It should raise this revenue such that it: (a) applies the least economically destructive forms of

taxation;[16] (b) has low tax rates on a broad, neutral tax base; (c) minimizes interference with the operation of the free market and free enterprise; and (d) minimizes the cost to taxpayers of compliance with and administration of the tax system.

- Second, the tax system should minimize its adverse impact on the family and the core institutions of civil society.

- Third, the tax system should be applied consistently—with special privileges for none—and respect taxpayer due process and privacy rights.

The current tax system is inconsistent with these principles and needs to be reformed to promote prosperity, reduce compliance costs, and improve fairness. The incoming Administration should promote immediate intermediate reforms to the existing system. It should then pursue fundamental tax reform.

Intermediate Tax Reform. The Treasury should work with Congress to simplify the tax code by enacting a simple two-rate individual tax system of 15 percent and 30 percent that eliminates most deductions, credits and exclusions. The 30 percent bracket should begin at or near the Social Security wage base to ensure the combined income and payroll tax structure acts as a nearly flat tax on wage income beyond the standard deduction. The corporate income tax rate should be reduced to 18 percent. The corporate income tax is the most damaging tax in the U.S. tax system, and its primary economic burden falls on workers because capital is more mobile than labor.[17] Capital gains and qualified dividends should be taxed at 15 percent. Thus, the combined corporate income tax combined with the capital gains or qualified dividends tax rate would be roughly equal to the top individual income tax rate.[18] The system should allow immediate expensing for capital expenditures and index capital gains taxes for inflation.

In addition, intermediate tax reform should repeal all tax increases that were passed as part of the Inflation Reduction Act,[19] including the book minimum tax, the stock buyback excise tax, the coal excise tax, the reinstated Superfund tax, and excise taxes on drug manufacturers to compel them to comply with Medicare price controls. The next Administration should also push for legislation to fully repeal recently passed subsidies in the tax code, including the dozens of credits and tax breaks for green energy companies in Subtitle D of the Inflation Reduction Act.[20]

Universal Savings Accounts. All taxpayers should be allowed to contribute up to $15,000 (adjusted for inflation) of post-tax earnings into Universal Savings Accounts (USAs). The tax treatment of these accounts would be comparable to Roth IRAs. USAs should be highly flexible to allow Americans to save and invest as they see fit, including, for example, investments in a closely held business. Gains from investments in USAs would be non-taxable and could be withdrawn at any

time for any purpose. This would allow the vast majority of American families to save and invest without facing a punitive double layer of taxation.

Entrepreneurship. To encourage entrepreneurship, the business loss limitation should be increased to at least $500,000. Businesses should also be allowed to fully carry forward net operating losses. Extra layers of taxes on investment and capital should also be eliminated or reduced. The net investment income surtax and the base erosion anti-abuse tax should be eliminated. The estate and gift tax should be reduced to no higher than 20 percent, and the 2017 tax bill's temporary increase in the exemption amount from $5.5 million to $12.9 million (adjusted for inflation) should be made permanent.[21] The tax on global intangible low-taxed income should be reduced to no higher than 12.5 percent, with the 20 percent haircut on related foreign tax credits reduced or eliminated.[22]

All non-business tax deductions and exemptions that were temporarily suspended by the 2017 tax bill should be permanently repealed, including the bicycle commuting expense exclusion, non-military moving expense deductions, and the miscellaneous itemized deductions.[23] The individual state and local tax deduction, which was temporarily capped at $10,000, should be fully repealed. Deductions related to educational expenses should be repealed. Special business tax preferences, such as a special deduction for energy-efficient commercial building properties, should be eliminated.[24]

Wages vs. Benefits. The current tax code has a strong bias that incentivizes businesses to offer employees more generous benefits and lower wages. This limits the freedom of workers and their families to spend their compensation as they see fit—and it can trap workers in their current jobs due to the jobs' benefit packages. Wage income is taxed under the individual income tax and under the payroll tax. However, most forms of non-wage benefits are wholly exempt from both of these taxes.

To reduce this tax bias against wages (as opposed to employee benefits), the next Administration should set a meaningful cap (no higher than $12,000 per year per full-time equivalent employee—and preferably lower) on untaxed benefits that employers can claim as deductions. Employee benefit expenses other than *tax-deferred* retirement account contributions should count toward the limitation, whether offered to specific employees or whether the costs relate to a shared benefit like building gym facilities for employees.[25] *Tax-deferred* retirement contributions by employers should not count toward this limitation insofar as they are fully taxable upon distribution. Only a percentage of Health Savings Accounts (HSA) contributions (which are not taxed upon withdrawal) should count toward the limitation.[26] The limitation on benefit deductions should not be indexed to increase with inflation.[27] Employers should also be denied deductions for health insurance and other benefits provided to employee dependents if the dependents are aged 23 or older.

Fundamental Tax Reform. Achieving fundamental tax reform offers the prospect of a dramatic improvement in American living standards and an equally dramatic reduction in tax compliance costs. Lobbyists, lawyers, benefit consultants, accountants, and tax preparers would see their incomes decline, however. The federal income tax system heavily taxes capital and corporate income and discourages work, savings, and investment.

The public finance literature is clear that a consumption tax would minimize government's distortion of private economic decisions and thus be the least economically harmful way to raise federal tax revenues.[28] There are several forms that a consumption tax could take, including a national sales tax, a business transfer tax, a Hall–Rabushka flat tax,[29] or a cash flow tax.[30]

Supermajority to Raise Taxes. Treasury should support legislation instituting a three-fifths vote threshold in the U.S. House and the Senate to raise income or corporate tax rates to create a wall of protection for the new rate structure. Many states have implemented such a supermajority vote requirement.

Tax Competition. Tax competition between states and countries is a positive force for liberty and limited government.[31] The Biden Administration, under the direction of Treasury Secretary Janet Yellen, has pushed for a global minimum corporate tax that would increase taxation and the size of government in the U.S. and around the world. This attempt to "harmonize" global tax rates is an attempt to create a global tax cartel to quash tax competition and to increase the tax burden globally. The U.S. should not outsource its tax policy to international organizations.

Organization for Economic Co-operation and Development. The Organization for Economic Co-operation and Development (OECD), in conjunction with the European Union, has long tried to end financial privacy and impose regulations on countries with low (or no) income taxes. In fact, on tax, environmental, corporate governance and employment issues, the OECD has become little more than a taxpayer-funded left-wing think tank and lobbying organization.[32] The United States provides about one-fifth of OECD's funding.[33] The U.S. should end its financial support and withdraw from the OECD.

TAX ADMINISTRATION

The Internal Revenue Service is a poorly managed, utterly unresponsive and increasingly politicized agency, and has been for at least two decades. It is time for meaningful reform to improve the efficiency and fairness of tax administration, better protect taxpayer rights, and achieve greater transparency and accountability. A substantial number of the problems attributed to the IRS are actually a function of congressional action that has made the Internal Revenue Code ridiculously complex, imposed tremendous administrative burdens on both the public and the IRS, and given massive non-tax missions to the IRS. But the culture, administrative practices, and management at the IRS need to change.

Doubling the IRS? The Inflation Reduction Act contains a radical $80 billion expansion of the IRS—enough to *double* the size of its workforce.[34] Unless Congress reverses this policy, the IRS will become much more intrusive and impose still greater costs on the American people.

The Biden Administration has also sought to make the tax system's administrative burden much worse in other ways. For example, it has proposed creating a comprehensive financial account information reporting regime that would apply to all business and personal accounts with more than $600. Banks would be required to collect the taxpayer identification numbers of and file a revised Form 1099-K for all affected payees, as well as provide additional information.[35] This massive increase in the scope and breadth of information reporting should be unequivocally opposed.

Management. The IRS has approximately 81,000 employees.[36] Of those, only two are presidential appointments—the Commissioner and the Chief Counsel.[37] As a practical matter, it is impossible for these two officials to overcome bureaucratic inertia and to implement policy changes that the IRS bureaucracy wants to impede. That is why, notwithstanding decades of sound and fury, almost nothing has changed at the IRS.

For the IRS to change and become more accountable, more transparent, and better managed, there is a need to increase the number of Presidential appointments subject to Senate confirmation, and not subject to Senate confirmation, at the IRS. At the very least, Congress should ensure that the Deputy Commissioner for Services and Enforcement, the Deputy Commissioner for Operations Support, the National Taxpayer Advocate, the Commissioner of the Wage and Investment Division, the Commissioner of the Large Business and International Division, the Commissioner of the Small Business Self-Employed Division, and the Commissioner of the Tax Exempt and Government Entities Division are presidential appointees.[38]

Information Technology. Despite the investment of billions of dollars for at least two decades, IRS information technology (IT) systems remain deficient.[39] The IRS inadequately protects taxpayer information, its IT systems do not adequately support operations or taxpayer services, and its matching and detection algorithms are antiquated.

These problems are not primarily about resources. The IRS has spent approximately $27 billion on IT during the past decade, with $7 billion of that designated as "development, modernization and enhancement."[40] The problem is one of management. The bureaucracy is not up to the task, and neither Congress nor a long line of IRS commissioners has forced changes.

A Deputy Commissioner for Operations Support with strong IT management skills should be appointed by the IRS Commissioner or the President (once the position is made a presidential appointment). The various subordinates to the

Deputy Commissioner should be replaced. A thorough review of IT contracts should be conducted. The Integrated Modernization Business Plan[41] should be systematically reviewed and a version of it cost-effectively implemented. An oversight board composed of private sector IT experts should be established and given the authority to conduct meaningful, contemporaneous oversight.

TAXPAYER RIGHTS AND PRIVACY

Legal protections for taxpayer rights and privacy have improved during the past three decades, but they remain inadequate.[42] Congress should do more. For example, interest on overpayments should be the same as interest on underpayments rather than the government receiving a higher rate, the time limit for taxpayers to sue for damages for improper collection actions should be extended, the jurisdiction of the Tax Court should be expanded, and the tax penalty system should be reformed by rationalizing the penalty structure and reducing some of the most punitive penalties.[43]

The Office of the Taxpayer Advocate was created by Congress to assist taxpayers when the IRS bureaucracy is unresponsive or negligent. About 1.7 percent of the IRS budget goes to this function.[44] Each year, the Office handles more than 250,000 cases, helping taxpayers to deal with the IRS. Each year, it issues nearly 2000 taxpayer assistance orders, a form of administrative injunction, forcing the rest of the IRS to stop taking unwarranted actions.[45]

Congress should provide the Office of the Taxpayer Advocate with greater resources so that it may better assist taxpayers suffering from wrongful IRS actions. The office should also be strengthened by, among other things:

- Ensuring that the National Taxpayer Advocate can make his or her own personnel decisions to protect its independence;

- Ensuring NTA access to files, meetings, and other information needed to assist taxpayers or investigate IRS administrative practices;

- Requiring the IRS to address the NTA's comments in final rules and including the NTA in deliberations prior to the release of a proposed rule; and

- Authorizing the NTA to file *amicus* briefs independently.

Administrative Burden. In 2021, Americans filed 261 million tax returns and an astounding 4.7 billion information returns (such as Form W-2s, Form 1098s and Form 1099s).[46] Complying with tax law costs Americans more than $400 billion annually, or about 2 percent of gross domestic product.[47] Although the IRS

administers these reporting programs, most of this expense is mandated by Congress, not the IRS.

One of the primary reasons that Congress mandates ever-increasing information reporting is that the Treasury Department and the Joint Committee on Taxation staff almost always overestimate how much revenue will be gained from still more burdensome information reporting, and they do not estimate or report private compliance costs. Congress and the Treasury Department must undertake a serious review of the information reporting regime and reduce the burden on the public—especially small businesses. Small businesses suffer disproportionately from complexity and administrative burdens. Costs do not increase linearly with size, so elevated administrative costs have an adverse effect on the competitiveness of small firms.

Budget. The operating budget of the IRS should be held constant in real terms. The resources allocated to the Office of the Taxpayer Advocate should be increased by at least 20 percent (about $44 million). The Office of Equity, Diversity, and Inclusion should be closed. Provided that IT management is changed; an effective, well-considered implementation plan is adopted; and serious oversight is put in place, additional resources dedicated solely to IT modernization may be warranted.

INTERNATIONAL AFFAIRS

The Treasury Department should withdraw from Senate consideration the Protocol Amending the Convention on Mutual Administrative Assistance in Tax Matters.[48] The protocol will lead to substantially more transnational identity theft, crime, industrial espionage, financial fraud, and suppression of political opponents and religious or ethnic minorities by authoritarian and corrupt governments, including China, Colombia, Nigeria, and Russia. Unlike the original multilateral convention, the amended convention is open to *all* governments—including many that are either hostile to the United States, have serious corruption problems, or have inadequate privacy protections. The new Administration should also oppose the multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.[49]

International organizations such as the OECD, the World Bank, and the International Monetary Fund espouse economic theories and policies that are inimical to American free market and limited government principles. The global elites who operate the IMF regularly advance higher taxes and big centralized government. The IMF has intervened in American policy debates—and has even recommended that the U.S. raise taxes. The IMF's record of advancing global financial stability has been mixed at best. Its development assistance and lending programs in third-world countries have more often than not retarded growth rather than advancing it.

The Treasury Department plays an important role in these international institutions and should force reforms and new policies. The U.S., however, should

withdraw from both the World Bank and the IMF and terminate its financial contribution to both institutions.

If the U.S. is to provide economic assistance or humanitarian aid to other nations, it should do so unilaterally—not through the pass-throughs of international aid organizations, non-governmental organizations, or other nations. These organizations and countries simply create expensive middle-men, while U.S. funds are intercepted before being distributed to those in need. Also, these foreign entities have interests that do not coincide with American national security and economic interests.

FISCAL RESPONSIBILITY

Treasury should make balancing the federal budget a mission-critical objective. The federal budget absorbs enormous resources from the economy, both in money taken from taxpayers and in money borrowed. The budget should be balanced by driving down federal spending while maintaining a strong national defense and not raising taxes.

To reduce interest payments on the debt, Treasury should lock in current relatively low interest rates by issuing longer duration bonds, and even consider creating a 50-year treasury bill. Most of the federal debt rolls over on average about every three to four years. But interest rates, even with the latest Federal Reserve rate increases, are still below the 5 percent historical average. Treasury would thus save taxpayers money during the next several decades by issuing fewer short-term notes that will probably have to be rolled over at higher rates in the future.

To promote transparency of finances, each year Americans should receive a financial statement of the U.S. government alerting citizens of the revenues, expenditures, deficit, and debt for the preceding fiscal year. The statement should also include this individual family's pro-rata share of the debt based on family size.

INTERNATIONAL COMPETITIVENESS

The Treasury must act more assertively in international financial institutions to protect and advance U.S. national interests—and oppose those that do not. It should employ a carrot-and-stick approach by increasing its activity and commitment to those financial institutions that are willing and able to adjust to this new approach and by zeroing out or potentially exiting those institutions that rely on U.S. capital while advancing agendas that run counter to U.S. interests.

- A major emphasis of effecting this change must be the addition of a large new cadre of U.S. professionals and contractors at these international financial institutions.

- The U.S. must insist on the hiring and support of this human capital as a condition to future funding.

- The U.S. should also examine increasing or decreasing its ownership levels in these institutions in order to achieve maximum leverage.

CHINA AND OTHER GEOPOLITICAL THREATS

Committee on Foreign Investment in the United States. The interagency Committee on Foreign Investment in the United States should realign its priorities to meet the United States' current foreign policy threats, especially from China.

On October 20, 2022, the Treasury Department, which chairs CFIUS, adopted the first-ever CFIUS Enforcement and Penalty Guidelines[50] on the committee's national security risk mitigation requirements. However, there are no clear rules that guide CFIUS on mitigation monitoring, nor is there a published penalty schedule to standardize accountability when CFIUS pursues a civil money penalty for violators. In addition, Treasury—as chair of the committee—runs an opaque process that biases committee procedure toward corporate interests and away from national security interests. Finally, the committee's jurisdiction does not extend over greenfield investments that Chinese state-owned enterprises have historically pursued in the United States, which leaves America vulnerable to an instrument of Chinese economic statecraft.

Given these issues, the next steps for CFIUS should be to develop a more coherent—and transparent—mitigation monitoring program to complement the enforcement guidelines, give CFIUS agencies in charge of national security concerns an equal voice at the table, and petition Congress to amend the law to cover Chinese greenfield investments.

CFIUS should publish a penalty schedule for violations of CFIUS reporting and mitigation requirements. Publishing a penalty schedule for CFIUS violations will reduce the discretion of the committee to waive penalties or impose mere "wrist slap" costs on violators of the law. Additionally, a standardized penalty schedule would likely increase the deterrence of CFIUS enforcement by reducing the perception among parties to covered transactions that they can avoid enforcement by the committee or secure special exceptions based on appeals to the committee's discretion.

As a legal matter—and in application by CFIUS—mitigation monitoring has developed as the Wild West. There are no clear rules that guide the entire committee on mitigation monitoring, nor is there the same level of oversight or accountability within and among the agencies as applies when CFIUS reviews a transaction or when it pursues a civil money penalty. Indeed, it is a credit to transaction parties and the professionalism of the governmental officials and contractors who conduct mitigation monitoring on behalf of the government that, by and large, mitigation monitoring has worked adequately during the last several decades. But dependency on the personality and capabilities of individuals creates unnecessary risk both for CFIUS and for transaction parties.

Congress should make the Department of Defense (DOD) a CFIUS co-chair with the Department of Treasury. Making DOD an official CFIUS co-chair along with Treasury will establish a balanced committee process by elevating national security interests to an equal stature. The committee is currently imbalanced toward the interests of corporate America because Treasury is the sole chair of CFIUS and, in practice, runs a process that is not fully transparent and which biases it from the national security interests represented by DOD and the Intelligence Community (IC).

For example, Treasury representatives will consult with the Commerce Department and the United States Trade Representative—which tend to favor permitting covered transactions to occur with little to no mitigation requirements—and these representatives will then obscure the results and purposes of such sidebar meetings from DOD and IC representatives. This hampers DOD, IC, and sometimes even State Department representatives from full participation in the process or from advocating national security interests as well as they should.

Greenfield Investments. Congress should close the loophole on greenfield investments and require CFIUS review of investments in U.S.-based greenfield assets by Chinese-controlled entities to assess any potential harm to U.S. national and economic security. In the 2018 Foreign Risk and Review Modernization Act (FIRRMA),[51] one important category of foreign transactions left out of the bill was greenfield investments, particularly by Chinese state-owned enterprises (SOEs). Greenfield investments by Chinese SOEs pose a unique threat, and they should be met with the highest scrutiny by all levels of government.

Greenfield investments result in the control of newly built facilities in the U.S., and they were not addressed in FIRRMA primarily because governors and state governments embrace them. That is understandable; they typically bring the promise of creating American jobs. However, the goal of such Chinese SOEs is to siphon assets, technological innovation, and influence away from U.S. businesses in order to expand the global presence of the Chinese Communist Party. While the Chinese government keeps its domestic markets largely insulated from foreign influence, it regularly invests in the U.S. and other countries under the "greenfield" model. Firms fully owned by China's Communist regime are increasingly buying land, building factories, and taking advantage of state and local tax breaks on American soil.

Treasury should examine creating a school of financial warfare jointly with DOD. If the U.S. is to rely on financial weapons, tools, and strategies to prosecute international defensive and offensive objectives, it must create a specially trained group of experts dedicated to the study, training, testing, and preparedness of these deterrents. Recent experience has demonstrated that the U.S. cannot depend on the rapid development and deployment of untested, academically developed financial actions, stratagems, and weapons on an *ad hoc* basis.

Treasury must also seriously evaluate U.S. foreign direct investment in China. Particular focus should be paid to investments in CCP or other state-owned enterprises, investments that result in technology transfers from the U.S. to China, investments that enhance China's military capacity, and investments that pose risks to critical U.S. supply chains by sourcing critical components or feedstocks in China. An enhanced reporting system is warranted, and greater legal authority and restrictions are appropriate.

IMPROVED FINANCIAL REGULATION

One of the priorities of the incoming Administration should be to restructure the outdated and cumbersome financial regulatory system in order to promote financial innovation, improve regulator efficiency, reduce regulatory costs, close regulatory gaps, eliminate regulatory arbitrage, provide clear statutory authority, consolidate regulatory agencies or reduce the size of government, and increase transparency.

Merging Functions. The new Administration should establish a more streamlined bank and supervision by supporting legislation to merge the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Reserve's non-monetary supervisory and regulatory functions.

U.S. banking law remains stuck in the 1930s regarding which functions financial companies should perform. It was never a good idea either to restrict banks to taking deposits and making loans or to prevent investment banks from taking deposits. Doing so makes markets less stable. All financial intermediaries function by pooling the financial resources of those who want to save and funneling them to others that are willing and able to pay for additional funds. This underlying principle should guide U.S. financial laws.

Policymakers should create new charters for financial firms that eliminate activity restrictions and reduce regulations in return for straightforward higher equity or risk-retention standards. Ultimately, these charters would replace government regulation with competition and market discipline, thereby lowering the risk of future financial crises and improving the ability of individuals to create wealth.

Dodd–Frank Revisions. Congress should repeal Title I, Title II, and Title VIII of the Dodd–Frank Act.[52] Title I of Dodd–Frank created the Financial Stability Oversight Council, a kind of super-regulator tasked with identifying so-called systemically important financial institutions and singling them out for especially stringent regulation. The problem, of course, is that this process effectively identifies those firms regulators believe are "too big to fail."[53]

Title VIII of Dodd–Frank gives the FSOC similarly broad special-designation authority for specialized financial companies known as financial market utilities.[54] Title II of Dodd–Frank established the controversial provision known as orderly

liquidation authority (OLA), the law's alternative to bankruptcy for large financial firms. OLA was based on the faulty premise that large financial institutions cannot fail in a judicial bankruptcy proceeding without causing a financial crisis. It gives such companies access to subsidized funding and creates incentives for management to overleverage and expand high-risk investments.[55] Congress should repeal each of these provisions to guard against bailouts and too-big-to-fail problems.[56]

Treasury plays a role in funding the conservatorships of Fannie Mae and Freddie Mac. It should work to end the conservatorships and move toward privatization of these massive housing finance agencies. This would restore a sustainable housing finance market with a robust private mortgage market that does not rely on explicit or implicit taxpayer guarantees.

Direct government ownership has worsened the risks that government-sponsored enterprises (GSEs) pose to the mortgage market, and stock sales and other reforms should be pursued. Treasury should take the lead in the next President's legislative vision guided by the following principles:

- Fannie Mae and Freddie Mac (both GSEs) must he wound down in an orderly manner.
- The Common Securitization Platform[57] should be privatized and broadly available.
- Barriers to private investment must be removed to pave the way for a robust private market.
- The missions of the Federal Housing Administration and the Government National Mortgage Association ("Ginnie Mae") must he right-sized to serve a defined mission.

ANTI-MONEY LAUNDERING AND BENEFICIAL OWNERSHIP REPORTING REFORM

The Financial Crimes Enforcement Network is a relatively small bureau within the Treasury Department with approximately 285 employees and a FY 2022 budget of $173 million.[58] Although FinCEN makes a significant contribution to law enforcement efforts, it also does demonstrable, substantial and widespread economic harm because it: (1) is largely oblivious to those adverse economic effects; (2) conducts almost no meaningful cost-benefit analysis or retrospective review of regulations; (3) has been subject to extraordinarily lax oversight by both Congress and the Treasury Department; and (4) demands total transparency by those it regulates but is itself disturbingly and purposefully opaque. For example, FinCEN no longer issues an annual report[59] and no longer publishes cash transaction report (CTR) data.

There were 2 .7 million suspicious activity reports (SARs) filed in 2021.[60] The number of CTRs filed were approximately *10 times* that number.[61] In 2014, FinCEN anti-money laundering/countering the financing of terrorism (AML-CFT) rules cost an estimated $5 billion to $8 billion per year.[62] Undoubtedly, this cost is now substantially higher both because of inflation and because the rules have become more onerous.[63] Yet there is little evidence that this massive expenditure of resources is doing much good,[64] and there is no evidence regarding which aspects of the AML-CFT regime are effective and which are not. The AML-CFT regime is a major contributing factor causing the decline in the number of small broker-dealers and the decline in the competitiveness of community banks.

Congress must require FinCEN to annually publish data regarding:

- The number of SARs filed;
- The number of CTRs filed;[65]
- The number of AML-CFT prosecutions, disaggregating those in which the AML-CFT prosecution is stand-alone and in which the prosecution is an add-on count connected to other predicate crime;[66]
- The number of AML-CFT convictions (similarly disaggregated);
- The number and aggregate amount of AML-CFT fines imposed and the type of institution upon which the fine was imposed; and
- Annual estimates of the aggregate costs imposed on private entities by the AML-CFT regime.[67]

Without this data, it is impossible for policymakers to make an informed judgment about the effectiveness of the AML-CFT regime. Congress should also require both FinCEN and the Government Accountability Office to undertake separate evaluations regarding which aspects of the AML-CFT regime are effective and which are not. FinCEN should be required to undertake a thorough retrospective review of its regulations and various statutory requirements and report to Congress on its findings in a publicly available report. Anecdotes and assurances from FinCEN staff that all is well—but that even more onerous requirements are needed—are not enough.

Congress should repeal the Corporate Transparency Act, and FinCEN should withdraw its poorly written and overbroad beneficial ownership reporting rule. Both are targeted at the smallest businesses in the U.S. (those with 20 or fewer employees) and will do nothing material to impede criminal finance.[68] The FinCEN

beneficial ownership reporting rule will impose costs exceeding $1 billion annually and is exceedingly poorly drafted.[69] FinCEN itself estimates that more than 33 million businesses will be affected and that costs will be $547 million to $8.1 billion annually.[70]

THE "EQUITY" AGENDA

Under the Biden Administration, the Treasury Department has appointed a Counselor for Racial Equity, established an Advisory Committee on Racial Equity, and created an office for Diversity, Equity, Inclusion, and Accessibility. All these should be eliminated. Treasury has created several new offices to promote "equity" and has made this its first of five strategic goals in its *Fiscal Year 2022–2226 Strategic Plan*. "Equity" is identified as a cross-cutting theme in 15 of 19 of the plan's objectives.

The avowed purpose of these initiatives is to implement policies that deliberately favor some races or ethnicities over others. The casual acceptance and rapid spread of racist policymaking in the federal government must be forcefully opposed and reversed. The next conservative Administration should take affirmative steps to expose and eradicate the practice of critical race theory and diversity, equity, and inclusion (DEI) throughout the Treasury Department.

These steps will include:

- **Identify** every Treasury official who participated in DEI initiatives and interview him or her for the purpose of determining the scope and nature of these initiatives and to ensure that such initiatives are completely ended.

- **Make** public immediately all communications relating to the work of the Treasury's critical race theory and DEI initiatives.

- **Treat** the participation in any critical race theory or DEI initiative, without objecting on constitutional or moral grounds, as *per se* grounds for termination of employment.

- **Expose and make public** all training materials and initiatives designed to single out any race, ethnicity, or sex for special treatment.

The Administration should eliminate the 25-member Treasury Advisory Committee on Racial Equity.

CLIMATE-RELATED FINANCIAL RISK

Treasury has created a new departmental office, "Climate Hub," and has made "combating climate change" one of the Biden Treasury Department's top five

principal goals. The next Administration should eliminate the Climate Hub Office and withdraw from climate change agreements that are inimical to the prosperity of the United States.

The Climate Hub office "coordinates Treasury's work to inform, guide, incentivize, and mobilize financial flows for climate mitigation and climate adaptation and supports the broader alignment of the financial system with a path to net-zero emissions by mid-century."[71] According to the Biden Administration's *Fiscal Year 2022–2026 Strategic Plan* for Treasury, the fourth of five Treasury strategic goals reads:

> Combat Climate Change
>
> The United States and the world face a climate crisis and a narrowing window of action to avoid the worst impacts of climate change. At the same time, the transition to a low carbon economy represents a historic economic opportunity for the U.S. and global economy. The U.S. federal government must work alongside our domestic and international partners to respond ambitiously to tackle the challenges of climate change, adapt to an already changing climate, mitigate the risks, and position the global economy for clean and sustainable growth.[72]

Yet history shows that economic growth and technological/scientific advance through human ingenuity are by far the best ways to prevent and mitigate extreme weather events. Moreover, virtually all of the initiatives that the Biden Administration has adopted would, even if successful, have a *de minimis* impact on changing global weather patterns, in part because most nations—notably China—are not cooperating with climate summits and international agreements. Virtually all nations, for example, that signed the Paris Agreement[73] have not met their treaty obligations. Such routinely violated treaties weaken the U.S. economy with no offsetting societal benefits. To that end, the next conservative Administration should withdraw the U.S. from the U.N. Framework Convention on Climate Change[74] and the Paris Agreement.

The next Administration should use Treasury's tools and authority to promote investment in domestic energy, including oil and gas. It should reverse support for international public- (and private-) based efforts promoting Environmental, Social, and Governance[75] and Principles for Responsible Investment,[76] both of which have badly damaged U.S. energy security.

OTHER REFORMS

U.S. Coast Guard and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Congress should examine whether to return the Treasury's former

in-house law enforcement capabilities via the return of the United States Coast Guard and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Bringing these agencies back from the Department of Homeland Security and the Department of Justice, respectively, would allow Treasury, in the case of U.S. Coast Guard, to increase border security via a vigilance with respect to economic crimes (for example, drug smuggling and tax evasion).

U.S. Trade and Development Agency. Congress should eliminate the U.S. Trade and Development Agency (USTDA). The USTDA is intended to help companies create U.S. jobs through the export of U.S. goods and services for priority development projects in emerging economies. The USTDA links U.S. businesses to export opportunities by funding project planning activities, pilot projects, and reverse-trade missions while creating sustainable infrastructure and economic growth in partner countries.

These activities more properly belong to the private sector. The best way to promote trade and development is to reduce tariff and non-tariff trade barriers. Another way is to reduce the federal budget deficit, and thereby federal borrowing from abroad, freeing more foreign dollars to be spent on U.S. exports instead of federal treasury bonds.

Other Issues. Many Treasury Department issues cut across multiple parts of Treasury or other governmental agencies. Several are discussed in this chapter, but not all can be covered here in depth. Other issues of concern include China, cybersecurity, digital assets, digital services taxes, international debt defaults, Iran, Social Security and Medicare Trust Funds and private sector pensions, sanctions policy, and treasury auction and debt issuance.

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23. For miscellaneous itemized deductions, see Internal Revenue Code (26 U.S. Code § 67). Business deductions that were suspended by the 2017 tax bill (other than those related to depreciation) should also be extended. This includes the local lodging expense deduction and entertainment expense deductions. The 2017 tax bill's modifications to the deduction for personal casualty and theft losses should be made permanent. The Pease limitation on itemized deductions should be permanently eliminated.
24. Bonus depreciation provisions applied to specific industries should be maintained.
25. Employer-provided childcare expenses should also count toward the limitation on benefit deductions.
26. HSAs are flexible and portable, and they help contain costs by giving health care consumers skin in the game.
27. For additional revenue to fund pro-growth tax cuts, lawmakers could gradually phase down the limitation on benefit deductions.
28. Early versions of the 2017 tax bill envisioned reforming the corporate income tax into a destination-based cash flow tax, a form of consumption tax. A tax system that taxes labor and capital-factor incomes equally—and only once—results in higher output and higher incomes. Usually, in the modern public finance literature, this is called a consumption tax. On the economic superiority of consumptions taxes, see N. Gregory Mankiw et al., "Optimal Taxation in Theory and Practice," *Journal of Economic Perspectives*, Vol. 23, No. 4 (2009), pp. 147–174, https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.23.4.147 (accessed March 19, 2023); Alan J. Auerbach, "The Choice Between Income and Consumption Taxes: A Primer," NBER Working Paper No. 12307, June 2006, https://www.nber.org/system/files/working_papers/w12307/w12307.pdf (accessed March 19, 2023); and Charles E. Walker and Mark A. Bloom eld, eds., *The Consumption Tax: A Better Alternative?* (Cambridge, MA: Harper and Row, Ballinger, 1987).
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23

EXPORT–IMPORT BANK

THE EXPORT–IMPORT BANK SHOULD BE ABOLISHED

Veronique de Rugy

The Export–Import Bank of the United States (EXIM or the Bank) is a federal agency that was established in 1934 to provide export subsidies through taxpayer-backed financing to private exporting corporations, as well as to foreign companies buying U.S. exports, with the ostensible purpose of promoting American exports, creating jobs, supporting small businesses, improving U.S. competitiveness, and protecting U.S. taxpayers.

In 1986, David Stockman, who served as Director of the Office of Management and Budget under President Ronald Reagan, wrote that:

> Export subsidies are a mercantilist illusion, based on the illogical proposition that a nation can raise its employment and GNP by giving away its goods for less than what it costs to make them.... Export subsidies subtract from GNP and jobs, not expand them.... Moreover, in 1981, the EXIM's practice was to bestow about two thirds of its subsidies on a handful of giant manufacturers, including Boeing aircraft, General Electric, and Westinghouse.[1]

Since then, very little has changed. EXIM operates in effect as a protectionist agency that picks winners and losers in the market by providing political privileges to firms that are already well-financed. By doing so, it risks taxpayer funds as it stymies economic growth. This reality is not altered by the argument that the Bank could be a weapon to fight China—an argument that rests on a misguided

understanding of what competitiveness is and how it is achieved and maintained. The Bank should be abolished.

BACKGROUND

The Export–Import Bank was created in 1934 as an export credit agency (ECA) to finance trade with the Soviet Union. It was reorganized as an independent government agency in 1945. President Franklin Roosevelt's Executive Order 6581 gave it "the power to aid in financing and to facilitate exports and imports and the exchange of commodities between the United States and other Nations or the agencies and nationals thereof" to create jobs in the United States.[2]

EXIM has four main tools with which to pursue these goals: loan guarantees, working capital guarantees, direct loans, and export-credit insurance. Importantly, for four years starting at the end of 2015, the Bank became incapacitated. Lacking a quorum for its board of directors, it could not extend financing that exceeded $10 million per project. That put an end to about 85 percent of the Bank's financing obligations. As the numbers below show, the Bank hasn't yet recovered from that long interruption.

Total Bank authorizations in recent years have gone from $12.6 billion in fiscal year (FY) 2007[3] to $21.5 billion in FY 2014[4] to $5.2 billion in FY 2022.[5] A better way to understand these numbers is to look at the amount of financial exposure the Bank has—that is, the risk the Bank takes for which taxpayers are ultimately responsible. During this same period, the Bank's total exposure increased from $57.42 billion in FY 2007[6] to $112.1 billion in FY 2014[7] and then fell to $41.3 billion in FY 2021[8] and $35.4 billion in FY 2022.[9]

CLAIMS VS. THE FACTS

Supporters of EXIM make many claims about the benefits that our nation and citizens derive from having an Export Credit Agency. These claims, however, are not supported by the facts.

The Bank is an example of government-granted privilege. Traditionally, one of EXIM's top 10 domestic beneficiaries is Boeing, which at a 40 percent share of total loan authorizations dwarfs the 25 percent share for all small businesses that received EXIM's services combined.[10] On the foreign side, things are not much different: The subsidized financing largely benefits very large companies like Mexico's Pemex, Ireland's Ryanair, and Emirates Airlines that either collect massive subsidies as state-controlled entities or could easily access private financing.[11] American businesses that lack political connections are put at a competitive disadvantage by their own government because they are forced to compete against both domestic and foreign businesses that enjoy access to subsidized loans.[12]

The Bank does not maintain or create jobs. EXIM's supporters point to the numbers of new jobs that they claim have been created through federal spending,

but the unseen effects are ignored. For example, funding for one industry or firm might take more jobs away from other industries and firms, resulting in a net job loss even though jobs are created for the financed firm. At best, it could be said that the Bank redistributes employment from unsubsidized firms to subsidized firms.

However, with very rare exceptions, most exports financed by EXIM would have taken place without government support. Many companies have said so themselves;[13] the procurement happens before the decision to get government support; and, as noted above, most EXIM deals go to large companies with easy access to capital. Thus, the agency is taking credit for jobs that would have existed in any event.

The Bank does not promote exports. EXIM presidents commonly claim that the agency's mission is to support U.S. jobs by facilitating American exports through its export-financing tools. However, trade economists have long known that export credit subsidies merely redistribute exporting opportunities to subsidized firms instead of increasing the net number of exports—something that also slows economic growth.[14]

Even more telling is the performance of the U.S. economy and American exports during the four years when EXIM lacked a board quorum (2015–2019) and was barred from finalizing deals in excess of $10 million. During that time, EXIM authorizations fell from $21 billion in FY 2014 to $3.6 billion in FY 2018 (adjusted for inflation).[15] However, also during that time, regular big-ticket EXIM beneficiaries continued to benefit from their easy access to capital markets and still had the ability to finance their export activities.

Further, U.S. exports were utterly unaffected by the reductions in the Bank's activities.[16] U.S. unemployment fell to a level not seen in half a century, but exports soared with financing provided by commercial lenders. The only negative economic impact from EXIM's lack of a board quorum was its effect on the Bank itself. This contradicts EXIM's claim that its activities are crucial for the success of U.S. exporters and economic growth. Instead, it shows that economic growth is the best booster of U.S. exports and job creation and that it does not depend on EXIM subsidies.

Subsidy-boosted exports do not boost economic growth. EXIM's primary reason for existing is to increase exports, as if more exports *themselves* represent more jobs and economic growth. Recent expressions of this fallacious belief can be found in a book by former EXIM President Fred Hochberg. According to Hochberg, "We know that trade, and exports in particular, can have a big impact on jobs."[17] While this is a common misconception about exports, it is one worth correcting. As trade economists know, exports are a cost to the economy: They subtract from GDP. Imports, on the other hand, add to GDP. If the U.S. could acquire all of the imports that it currently gets without exporting anything in exchange, that would be the best of all worlds. Unfortunately, one reason that foreigners are so eager

to sell us their goods is that they want our dollars to buy our debt, invest in the country, and buy our exports. That is why exports drop when overall imports drop.

Exports promote U.S. economic growth *only* if the value of the resources used to produce them is less than the value of what we receive as imports in exchange for those exports. By subsidizing American exports, EXIM causes too many resources to be devoted to producing exports. As a result, the total value of our exports is made larger than it would otherwise be to obtain any given amount of imports. In other words, EXIM thus compels American taxpayers to subsidize foreigners' standards of living at no appreciable benefit to the U.S.

Unfortunately, this misunderstanding and the constant glamorization of exports and their impact on jobs and growth are used to justify government support for some exports (on average, 98 percent of exports are not backed by EXIM financing). It also is extremely unfair. Because capital will tend to shift from unsubsidized companies to subsidized companies (taxpayers foot the bill if companies backed by the Bank default), unsubsidized export companies face higher borrowing costs, which could translate into fewer jobs in unsubsidized companies or lower pay for their workers.

The Bank does not promote growth by leveling the playing field. EXIM's charter stipulates that one of its missions is to support U.S. exports with the goal of creating jobs and promoting economic growth through the provision of export financing via its loan-guarantee and insurance programs. In particular, EXIM is to intervene in cases "where such support is necessary to level the competitive playing field for U.S. exporters due to financing provided by foreign governments to their exporters."[18]

As a result, EXIM for years has been focused primarily on what other countries' ECAs are doing and how much financing they are providing.[19] A reading of any of EXIM's Competitiveness Reports shows that the Bank frames the "competitiveness" of the U.S. economy and exporters in extremely narrow terms—specifically, as the amount of business that foreign ECAs are doing relative to EXIM.

The report for 2020 features striking evidence of this mindset. For instance, lamenting the "nearly four-year hiatus" during which the Bank lacked a board quorum to approve large deals, EXIM's leadership maintains that these years "severely hindered EXIM's ability to support the competitiveness of U.S. exporters." During that time, foreign ECAs "fundamentally evolved their philosophy and substantively expanded their roles," and "the United States must work hard to keep pace." The Bank goes on to promise that it will "re-emerge from the years of being out of the long-term export finance business and restore its standing as one of the world's most competitive ECAs."[20]

In other words, EXIM bureaucrats appear to believe that economic growth and jobs result not from a favorable tax and regulatory environment, but from a victory in hand-to-hand subsidy combat between government banks. The Bank's

Competitiveness Reports include a table that ranks countries by ECA financing volume. An adjacent map displays the most "competitive" ECAs around the world, implying that the U.S., which ranked eighth in terms of volume in 2019 (the year before the pandemic), is losing ground compared to more "hyperactive" (ranked higher) ECAs.[21] The implication is that ECA export financing improves the overall health of the export market and thereby fuels economic and job growth—which it does not do.

- Consider Italy's hyperactive ECA. In 2019, Italy was ranked first among Organisation for Economic Co-operation and Development (OECD) countries in terms of volume and was highlighted in the report as an example for other countries to follow. Yet the Italian ECA's hyperactivity appears to have had little impact on that country's economic growth or employment.

- Germany was the second-highest ranked OECD country on this list in 2019. While Germany had respectable economic growth at the time of the report, only 0.7 percent of its exports were backed by ECA financing. These data provide little support for the argument that Germany's strong economic performance has much, if anything, to do with the German ECA.

- China by all accounts had a hyperactive ECA: It ranked first on the list in 2019. ECA-backed exports in China represented 2.1 percent of exports backed by government financing. Whatever one perceives as China's economic successes, it is hard to argue that the main driver of China's exports is its ECA.

- The report highlights the eighth-ranked U.S. for its unusually low level of EXIM-backed exports. At the time of the report, the U.S. economy was thriving, wages and employment were up, and the country still had flourishing trade—but it was also striving when EXIM was mostly dormant. In other words, one cannot argue that the bustling economy was the result of EXIM support.

Even in countries touted as leaders in relying on ECA financing, ECA-backed exports are never more than 4.7 percent of total exports. Moreover, even that is an outlier. For 23 of the 28 countries on this list (including both China and the U.S.), the share of exports backed by ECA financing is less than 2 percent. This fact suggests that—contrary to the claims of EXIM's advocates—ECA financing is irrelevant to the overall health of the export market as well as to economic growth. This is consistent with what economists know about the impact of subsidies on economic growth.

The Bank does not support small businesses. Most of the Bank's funding goes to large corporations such as Boeing—a recipient of 68 percent of EXIM's loan guarantees and 30 percent of EXIM's overall activities.[22] Over the years, 10 large domestic corporations have received roughly 65 percent of the Bank's total assistance (it is closer to 70 percent today). More than 99.9 percent of U.S. small businesses receive no benefits from EXIM and are often placed at a competitive disadvantage by the subsidies doled out to larger competitors. In fact, the Bank's support for small businesses has declined from $2.3 billion in FY 2019[23] to "more than $2.0 billion" in FY 2020[24] to only $1.6 billion in FY 2021.[25] This decline occurred amid a pandemic that hit small businesses especially hard, and it continues today.

The Bank is not a good deal for taxpayers. The Bank's accounting practices are deficient, and the Bank miscalculates its budget savings. While it claims that its operations will save taxpayers $14 billion over the next decade, the Congressional Budget Office has found that EXIM programs will actually *cost* taxpayers $2 billion.[26] Numerous audits done by the Bank's internal inspector general also show that the Bank's risk analyses, default assumptions, internal reporting procedures, and financial reporting practices are not reliable enough to ensure the safe stewardship of taxpayer funds and responsible management of EXIM's vast portfolio.[27]

FAILING TO MEET THE CHINA CHALLENGE

These days, to get whatever expansion of government one wants or to justify a new government activity, one has only to declare that more government intervention is needed to help fight China. President Trump used this argument to secure reauthorization of EXIM in 2019. Today, President Biden argues that the Bank could be a powerful weapon in the government's geoeconomic arsenal against China.

The rationale is that this will prevent China from dominating the global market with its subsidies and will boost American jobs and manufacturing. The problem is that cynics who support such policies make no effort to adopt a serious strategic plan to achieve this goal. For instance, how can EXIM help us to fight China while state-owned Chinese companies like China Air have been some of the companies most subsidized by EXIM?[28] Furthermore, it has now been four years since Congress instructed EXIM to focus on China, but there has been no fundamental change in the way EXIM operates or the companies to which it extends taxpayer-backed financing: Deals related to the aircraft industry still dominate the Bank's portfolio.

In addition, there is no evidence that EXIM has altered its intense focus on competing with other governments' ECAs. If the Bank were serious about competing against China, it would be targeting the low-income markets where China

has been making its most important investments. Instead, its obsession with other ECAs has caused EXIM to direct the vast majority of its funding to large foreign companies in higher-income nations. Data available on the OECD website show that the level of ECA financing in high-income countries in 2019 was more than double the amount in low-income countries.[29] The same was true for previous years. In other words, EXIM and the ECAs of the OECD are competing in markets where commercial lending is abundant—a trend that continues today.

The failure to deliver on its congressionally imposed obligation—however misguided that obligation may be—is also noticeable in the fact that EXIM's China and Transformation Exports Program (CTEP) extended only $141.3 million in financing in FY 2022—a fraction of the $27 billion it is supposed to deliver by the end of 2026.[30] The Bank's efforts have also included a misplaced focus on emerging technologies such as quantum computing and artificial intelligence, which do not need EXIM financing because their foreign sales attract commercial financing without government support. The lack of demand for EXIM products could also be reflected in the Bank's authorization of $5.2 billion in loan guarantees and support in FY 2022,[31] down from its FY 2012 peak of "over $35.7 billion" during the Obama Administration.[32]

This lack of activity also extends to the semiconductor industry, which has been picked as a focal point for a governmentwide industrial policy effort to counter China's ambition to dominate that industry. Ironically, at the same time that some want to become more like China to fight China, China's leaders are realizing that their heavy-handed semiconductor subsidies are weakening the Chinese economy. According to Bloomberg News:

> Top [Chinese] officials are discussing ways to move away from costly subsidies that have so far borne little fruit and encouraged both graft and American sanctions, people familiar with the matter said. While some continue to push for incentives of as much as 1 trillion yuan ($US145 billion), other policymakers have lost their taste for an investment-led approach that's not yielded the results anticipated, the people said.[33]

This development is not surprising to those who understand basic economics. The goal of using EXIM as a weapon against China was a bad idea in the first place. Even if it were a good idea, for it to succeed would have required that EXIM stop serving the clients it has been serving for decades. That has not happened, and it will not happen.

CONCLUSION

The Export–Import Bank should be abolished because it wastes taxpayer money, adversely affects American businesses, and does not promote economic growth

effectively. Furthermore, any attempts to reorient the agency and make it a weapon with which to fight against China are going to fail. Economic fights and national security fights are not won with subsidies.

THE CASE FOR THE EXPORT–IMPORT BANK

Jennifer Hazelton

In 1986, President Ronald Reagan signed a bill extending the charter of the Export–Import Bank (EXIM) by an additional six years. In a signing statement attached to the bill, the President declared that "[t]his sends an important signal to both our exporting community and foreign suppliers that American exporters will continue to be able to compete vigorously for business throughout the world."[34]

As a candidate for President, Ronald Reagan was opposed to EXIM, but as President, he learned the challenges America's businesses face when competing for opportunities overseas, and his position on EXIM evolved. As President Reagan once famously remarked, "Why would I want our businesses competing with two hands tied behind their backs?" On January 30, 1984, the President said, "Exports create and sustain jobs for millions of American workers and contribute to the growth and strength of the United States economy. The Export–Import Bank contributes in a significant way to our nation's export sales."

President Reagan was exactly right. EXIM provides a mechanism that American companies can use to vie for projects that would otherwise be out of reach, notably deals that the banking industry won't finance because of the risk associated with the host country or because the host nation itself requires a sovereign guarantee in order to submit a bid. EXIM is the only American vehicle that can provide that sovereign guarantee.

Since Reagan's presidency, the global economic order has shifted dramatically, and a rising China has completely disrupted the export credit sector.

- In Reagan's era, export credit financing was a means for nations to compete for and win projects overseas in order to create more jobs at home. It was a benign tool for economic expansion. China, however, has morphed export credit financing into a weapon of national security.

- Where most nations have just one export credit agency (ECA), China has three, all targeted for specific stages of economic and industrial development. The amount of money China has put behind these three instruments is staggering.

- It is estimated that in 2018, China provided more than $500 billion in export credit, approaching in that one year the total amount of financing EXIM has provided in its 90-year history.

- China's export credit activity is greater than that of the ECAs of the entire G7 combined. Today, China is the world's largest official creditor, maintaining a portfolio more than twice the size of the World Bank and International Monetary Fund combined.

- China's highly aggressive Belt and Road Initiative, which has prompted international criticism for ensnaring the developing world in "debt-trap diplomacy," has created a sphere of economic and strategic influence that includes about 150 countries, rivaling the relationships of the United States and her allies.

Unlike America and the G7 economies, China does not subscribe to the rules-based order that has governed export credit financing for nearly a century. As in so many other things, China plays by its own rules and is opaque in how it operates, weaponizing its export credit financing deals by offering developing nations terms that are often "too good to be true." Once the project is underway, the Chinese have been known to change the terms, making a project unaffordable for the purchasing country. These tactics have yielded China important strategic plunder like mines and critical minerals, satellites, and even ports like those in Hambantota, Sri Lanka, and Mombasa, Kenya.

Export credit is a strategic weapon in China's whole-of-government approach to enhance its global power, economic might, and national security. The only country that has the economic heft to counter China's aggressions in export credit financing is the United States. Not only do American companies risk losing out to Chinese competitors for international opportunities if EXIM is not there to offer support, but a United States without a functioning export credit agency also leaves an unchecked China with a wide-open field to claim jurisdiction over swaths of ocean and shipping lanes, expand its economic influence, and create major changes in the global balance of power.

In response to Chinese aggression in export credit, the ECAs of other countries have reacted defensively to change their policies and programs to avoid losing access to large chunks of global markets. Many countries, including strong U.S. allies like the United Kingdom, Canada, Japan, and Italy, have changed the mission of their ECAs from one of leveling the playing field for their exporters to hunting proactively for transactions for their businesses and advancing their national strategic interests over the long term. In addition, foreign buyers, particularly those looking to build large international projects, have been indicating that the availability of government-backed financing is a core component of their evaluation of bids and identification of sourcing. Allied nations have taken steps like lowering their content requirements in order to lure more deals, often at U.S. expense.

Meanwhile, U.S. content requirements have remained constant, and the United States continues to abide by traditional Organisation for Economic Cooperation and Development (OECD) rules. For example:

- The United Kingdom offered Boeing financing backed by Britain's ECA if Boeing would put Rolls Royce engines on its jets instead of GE engines.
- Italy's ECA offered General Electric export credit financing in exchange for moving the production of some of its turbine components from the United States to Italy.

China's tactics, as well as those of some of America's allies, have been successful in drawing manufacturing and the jobs associated with that production away from U.S. soil. EXIM's 2018 Competitiveness Report accurately documents how extensively foreign ECAs have expanded programs aimed at embedding their small and medium-sized exporters into the global supply chain to the detriment of U.S. exporters, particularly small businesses.[35] To ignore these changes and leave the United States without its own export financing weapon is to resign the United States to a reduced role in world geopolitical affairs and accept fewer jobs and lower standards of living for many Americans.

Critics of EXIM employ a host of defamatory slurs like "crony capitalism" and "Bank of Boeing." The "Bank of Boeing" moniker is particularly misleading, as it was born in the wake of the 2008 financial crisis when the airline industry was particularly hard hit and private-sector financing was not available for many airlines looking to purchase Boeing aircraft. EXIM's portfolio tends to be cyclical with different industries relying on export credit financing at different points in time, depending on economic conditions.

The truth is that EXIM provides financing only when the private sector will not or cannot (a concept known as additionality). In addition:

- When EXIM does provide financing, usually in the form of a loan or loan guarantee, the borrower pays interest rates that are driven by the market.
- EXIM does not undercut the private sector. It does not solicit any applications for financing, and all applications are judged on the merits of the transactions.
- All transactions must have "reasonable assurance of repayment," which is why EXIM has an exceptionally low default rate, historically hovering around 0.5 percent—a default rate that is the envy of private banking.

- When EXIM enters a deal, the American taxpayer is always protected first. If a deal goes into default, the U.S. taxpayer is paid back before any other lender.

- Borrowers are loathe to default on the United States of America.

This ability to manage risk successfully is why EXIM actually makes a profit for American taxpayers, described in government parlance as "negative subsidy," sending more than $9 billion to the U.S. Treasury for debt reduction since 1992. The bank has also supported hundreds of thousands of U.S. jobs, most of them in manufacturing, during the past decade.

Export credit financing has become a critical lever for macroeconomic growth for many countries, allies and competitors of the U.S. alike. Other nations are using ECAs strategically to influence decisions and procure economic opportunities, hindering the participation of U.S. firms and costing American jobs, particularly in manufacturing.

China's aggressive actions in export finance bleed beyond economic advancement and are clearly an effort to expand both its national security and its global power. The United States would be foolish to abandon this field of play, surrendering it to China and other nations, and to relinquish EXIM as a powerful tool in America's asymmetrical warfare toolbox.

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FEDERAL RESERVE

Paul Winfree

Money is the essential unit of measure for the voluntary exchanges that constitute the market economy. Stable money allows people to work freely, helps businesses grow, facilitates investment, supports saving for retirement, and ultimately provides for economic growth. The federal government has long made policy regarding the nation's money on behalf of the people through their elected representatives in Congress.[1] Over time, however, Congress has delegated that responsibility first to the Department of the Treasury and now to the quasi-public Federal Reserve System.

The Federal Reserve was created by Congress in 1913 when most Americans lived in rural areas and the largest industry was agriculture. The impetus was a series of financial crises caused both by irresponsible banks and other financial institutions that overextended credit and by poor regulations. The architects of the Federal Reserve believed that a quasi-public clearinghouse acting as lender of last resort would reduce financial instability and end severe recessions. However, the Great Depression of the 1930s was needlessly prolonged in part because of the Federal Reserve's inept management of the money supply. More recessions followed in the post–World War II years.

In the decades since the Federal Reserve was created, there has been a downturn roughly every five years. This monetary dysfunction is related in part to the impossibility of fine-tuning the money supply in real time, as well as to the moral hazard inherent in a political system that has demonstrated a history of bailing out private firms when they engage in excess speculation.

Public control of money creation through the Federal Reserve System has another major problem: Government can abuse this authority for its own advantage

by printing money to finance its operations. This necessitated the original Federal Reserve's decentralization and political independence. Not long after the central bank's creation, however, monetary decision-making power was transferred away from regional member banks and consolidated in the Board of Governors.

The Federal Reserve's independence is presumably supported by its mandate to maintain stable prices. Yet central bank independence is challenged in two additional ways. First, like any other public institution, the Federal Reserve responds to the potential for political oversight when faced with challenges.[2] Consequently, its independence in conducting monetary policy is more assured when the economy is experiencing sustained growth and when there is low unemployment and price stability—but less so in a crisis.[3] Additionally, political pressure has led the Federal Reserve to use its power to regulate banks as a way to promote politically favorable initiatives including those aligned with environmental, social, and governance (ESG) objectives.[4]

Even formal grants of power by Congress have not markedly improved Federal Reserve actions. Congress gave the Federal Reserve greater regulatory authority over banks after the stock market crash of 1929. During the Great Depression, the Federal Reserve was given the power to set reserve requirements on banks and to regulate loans for the purchase of securities. During the stagflation of the 1970s, Congress expanded the Federal Reserve's mandate to include "maximum employment, stable prices, and moderate long-term interest rates."[5] In the wake of the 2008 global financial crisis, the Federal Reserve's banking and financial regulatory authorities were broadened even further. The Great Recession also led to innovations by the central bank such as additional large-scale asset purchases.

Together, these expansions have created significant risks associated with "too big to fail" financial institutions and have facilitated government debt creation.[6] Collectively, such developments have eroded the Federal Reserve's economic neutrality.

In essence, because of its vastly expanded discretionary powers with respect to monetary and regulatory policy, the Fed lacks both operational effectiveness and political independence. To protect the Federal Reserve's independence and to improve monetary policy outcomes, Congress should limit its mandate to the sole objective of stable money.

This chapter provides a number of options aimed at achieving these goals along with the costs and benefits of each policy recommendation. These recommended reforms are divided into two parts: broad institutional changes and changes involving the Federal Reserve's management of the money supply.

BROAD RECOMMENDATIONS

- **Eliminate the "dual mandate."** The Federal Reserve was originally created to "furnish an elastic currency" and rediscount commercial paper so that the supply of credit could increase along with the demand for money

and bank credit. In the 1970s, the Federal Reserve's mission was amended to maintain macroeconomic stability following the abandonment of the gold standard.[7] This included making the Federal Reserve responsible for maintaining full employment, stable prices, and long-term interest rates.

Supporters of this more expansive mandate claim that monetary policy is needed to help the economy avoid or escape recessions. Hence, even if there is a built-in bias toward inflation, that bias is worth it to avoid the pain of economic stagnation. This accommodationist view is wrong. In fact, that same easy money causes the clustering of failures that can lead to a recession. In other words, the dual mandate may inadvertently contribute to recessions rather than fixing them.

A far less harmful alternative is to focus the Federal Reserve on protecting the dollar and restraining inflation. This can mitigate economic turmoil, perhaps in conjunction with government spending. Fiscal policy can be more effective if it is timely, targeted, and temporary.[8] An example from the COVID-19 pandemic is the Paycheck Protection Program, which sustained businesses far more effectively than near-zero interest rates, which mainly aided asset markets and housing prices. It is also worth noting that the problem of the dual mandate may worsen with new pressure on the Federal Reserve to include environmental or redistributionist "equity" goals in its policymaking, which will likely enable additional federal spending.[9]

- **Limit the Federal Reserve's lender-of-last-resort function.** To protect banks that over lend during easy money episodes, the Federal Reserve was assigned a "lender of last resort" (LOLR) function. This amounts to a standing bailout offer and encourages banks and nonbank financial institutions to engage in reckless lending or even speculation that both exacerbates the boom-and-bust cycle and can lead to financial crises such as those of 1992[10] and 2008[11] with ensuing bailouts.

  This function should be limited so that banks and other financial institutions behave more prudently, returning to their traditional role as conservative lenders rather than taking risks that are too large and lead to still another taxpayer bailout. Such a reform should be given plenty of lead time so that banks can self-correct lending practices without disrupting a financial system that has grown accustomed to such activities.

- **Wind down the Federal Reserve's balance sheet.** Until the 2008 crisis, the Federal Reserve never held more than $1 trillion in assets, bought largely

to influence monetary policy.[12] Since then, these assets have exploded, and the Federal Reserve now owns nearly $9 trillion of mainly federal debt ($5.5 trillion)[13] and mortgage-backed securities ($2.6 trillion).[14] There is currently no government oversight of the types of assets that the Federal Reserve purchases.

These purchases have two main effects: They encourage federal deficits and support politically favored markets, which include housing and even corporate debt. Over half of COVID-era deficits were monetized in this way by the Federal Reserve's purchase of Treasuries, and housing costs were driven to historic highs by the Federal Reserve's purchase of mortgage securities. Together, this policy subsidizes government debt, starving business borrowing, while rewarding those who buy homes and certain corporations at the expense of the wider public.

Federal Reserve balance sheet purchases should be limited by Congress, and the Federal Reserve's existing balance sheet should be wound down as quickly as is prudent to levels similar to what existed historically before the 2008 global financial crisis.[15]

- **Limit future balance sheet expansions to U.S. Treasuries.** The Federal Reserve should be prohibited from picking winners and losers among asset classes. Above all, this means limiting Federal Reserve interventions in the mortgage-backed securities market. It also means eliminating Fed interventions in corporate and municipal debt markets.

Restricting the Fed's open market operations to Treasuries has strong economic support. The goal of monetary policy is to provide markets with needed liquidity without inducing resource misallocations caused by interfering with relative prices, including rates of return to securities. However, Fed intervention in longer-term government debt, mortgage-backed securities, and corporate and municipal debt can distort the pricing process. This more closely resembles credit allocation than liquidity provision.

The Fed's mortgage-related activities are a paradigmatic case of what monetary policy should *not* do. Consider the effects of monetary policy on the housing market. Between February 2020 and August 2022, home prices increased 42 percent.[16] Residential property prices in the United States adjusted for inflation are now 5.8 percent above the prior all-time record levels of 2006.[17] The home-price-to-median-income ratio is now 7.68, far

above the prior record high of 7.0 set in 2005.[18] The mortgage-payment-to-income ratio hit 43.3 percent in August 2022—breaking the highs of the prior housing bubble in 2008.[19] Mortgage payment on a median-priced home (with a 20 percent down payment) jumped to $2,408 in the autumn of 2022 vs. $1,404 just one year earlier as home prices continued to rise even as mortgage rates more than doubled. Renters have not been spared: Median apartment rental costs have jumped more than 24 percent since the start of 2021.[20] Numerous cities experienced rent increases well in excess of 30 percent.

A primary driver of higher costs during the past three years has been the Federal Reserve's purchases of mortgage-backed securities (MBS). Since March 2020, the Federal Reserve has driven down mortgage interest rates and fueled a rise in housing costs by purchasing $1.3 trillion of MBSs from Fannie Mae, Freddie Mac, and Ginnie Mae. The $2.7 trillion now owned by the Federal Reserve is nearly double the levels of March 2020. The flood of capital from the Federal Reserve into MBSs increased the amount of capital available for real estate purchases while lower interest rates on mortgage borrowing—driven down in part by the Federal Reserve's MBS purchases—induced and enabled borrowers to take on even larger loans.[21] The Federal Reserve should be precluded from any future purchases of MBSs and should wind down its holdings either by selling off the assets or by allowing them to mature without replacement.

- **Stop paying interest on excess reserves.** Under this policy, also started during the 2008 financial crisis, the Federal Reserve effectively prints money and then "borrows" it back from banks rather than those banks' lending money to the public. This amounts to a transfer to Wall Street at the expense of the American public and has driven such excess reserves to $3.1 trillion, up seventyfold since 2007.[22] The Federal Reserve should immediately end this practice and either sell off its balance sheet or simply stop paying interest so that banks instead lend the money. Congress should bring back the pre-2008 system, founded on open-market operations. This minimizes the Fed's power to engage in preferential credit allocation.

MONETARY RULE REFORM OPTIONS

While the above recommendations would reduce Federal Reserve manipulation and subsidies, none would limit the inflationary and recessionary cycles caused by the Federal Reserve. For that, major reform of the Federal Reserve's core activity of manipulating interest rates and money would be needed.

A core problem with government control of monetary policy is its exposure to two unavoidable political pressures: pressure to print money to subsidize

government deficits and pressure to print money to boost the economy artificially until the next election. Because both will always exist with self-interested politicians, the only permanent remedy is to take the monetary steering wheel out of the Federal Reserve's hands and return it to the people.

This could be done by abolishing the federal role in money altogether, allowing the use of commodity money, or embracing a strict monetary-policy rule to ward off political meddling. Of course, neither free banking nor a allowing commodity-backed money is currently being discussed, so we have formulated a menu of reforms. Each option involves trade-offs between how effectively it restrains the Federal Reserve and how difficult each policy would be to implement, both politically for Congress and economically in terms of disruption to existing financial institutions. We present these options in decreasing order of effectiveness against inflation and boom-and-bust recessionary cycles.

Free Banking. In free banking, neither interest rates nor the supply of money is controlled by the government. The Federal Reserve is effectively abolished, and the Department of the Treasury largely limits itself to handling the government's money. Regions of the U.S. actually had a similar system, known as the "Suffolk System," from 1824 until the 1850s, and it minimized both inflation and economic disruption while allowing lending to flourish.[23]

Under free banking, banks typically issue liabilities (for example, checking accounts) denominated in dollars and backed by a valuable commodity. In the 19th century, this backing was commonly gold coins: Each dollar, for example, was defined as about 1/20 of an ounce of gold, redeemable on demand at the issuing bank. Today, we might expect most banks to back with gold, although some might prefer to back their notes with another currency or even by equities or other assets such as real estate. Competition would determine the right mix of assets in banks' portfolios as backing for their liabilities.

As in the Suffolk System, competition keeps banks from overprinting or lending irresponsibly. This is because any bank that issues more paper than it has assets available would be subject to competitor banks' presenting its notes for redemption. In the extreme, an overissuing bank could be liable to a bank run. Reckless banks' competitors have good incentives to police risk closely lest their own holdings of competitor dollars become worthless.[24]

In this way, free banking leads to stable and sound currencies and strong financial systems because customers will avoid the riskier issuers, driving them out of the market. As a result of this stability and lack of inflation inherent in fully backed currencies, free banking could dramatically strengthen and increase both the dominant role of America's financial industry and the use of the U.S. dollar as the global currency of choice.[25] In fact, under free banking, the norm is for the dollar's purchasing power to rise gently over time, reflecting gains in economic productivity. This "supply-side deflation" does not cause economic busts. In fact,

by ensuring that cash earns a positive (inflation-adjusted) rate of return, it can prevent households and businesses from holding inefficiently small money balances.

Further benefits of free banking include dramatic reduction of economic cycles, an end to indirect financing of federal spending, removal of the "lender of last resort" permanent bailout function of central banks, and promotion of currency competition.[26] This allows Americans many more ways to protect their savings. Because free banking implies that financial services and banking would be governed by general business laws against, for example, fraud or misrepresentation, crony regulatory burdens that hurt customers would be dramatically eased, and innovation would be encouraged.

Potential downsides of free banking stem from its greatest benefit: It has massive political hurdles to clear. Economic theory predicts and economic history confirms that free banking is both stable and productive, but it is radically different from the system we have now. Transitioning to free banking would require political authorities, including Congress and the President, to coordinate on multiple reforms simultaneously. Getting any of them wrong could imbalance an otherwise functional system. Ironically, it is the very strength of a true free banking system that makes transitioning to one so difficult.

Commodity-Backed Money. For most of U.S. history, the dollar was defined in terms of both gold and silver. The problem was that when the legal price differed from the market price, the artificially undervalued currency would disappear from circulation. There were times, for instance, when this mechanism put the U.S. on a de facto silver standard. However, as a result, inflation was limited.

Given this track record, restoring a gold standard retains some appeal among monetary reformers who do not wish to go so far as abolishing the Federal Reserve. Both the 2012 and 2016 GOP platforms urged the establishment of a commission to consider the feasibility of a return to the gold standard,[27] and in October 2022, Representative Alexander Mooney (R–WV) introduced a bill to restore the gold standard.[28]

In economic effect, commodity-backing the dollar differs from free banking in that the government (via the Fed) maintains both regulatory and bailout functions. However, manipulation of money and credit is limited because new dollars are not costless to the federal government: They must be backed by some hard asset like gold. Compared to free banking, then, the benefits of commodity-backed money are reduced, but transition disruptions are also smaller.

The process of commodity backing is very straightforward: Treasury could set the price of a dollar at today's market price of $2,000 per ounce of gold. This means that each Federal Reserve note could be redeemed at the Federal Reserve and exchanged for 1/2000 ounce of gold—about $80, for example, for a gold coin the weight of a dime. Private bank liabilities would be redeemable upon their issuers. Banks could send those traded-in dollars to the Treasury for gold to replenish their

vaults. This creates a powerful self-policing mechanism: If the federal government creates dollars too quickly, more people will doubt the peg and turn in their gold to banks, which then will turn in their gold and drain the government's gold. This forces governments to rein in spending and inflation lest their gold reserves become depleted.

One concern raised against commodity backing is that there is not enough gold in the federal government for all the dollars in existence. This is solved by making sure that the initial peg on gold is correct. Also, in reality, a very small number of users trade for gold as long as they believe the government will stick to the price peg. The mere fact that people *could* exchange dollars for gold is what acts as the enforcer. After all, if one is confident that a dollar will still be worth 1/2000 ounce of gold in a year, it is much easier to walk about with paper dollars and use credit cards than it is to mail tiny $80 coins. People would redeem en masse only if they feared the government would not be able control itself, for which the only solution is for the government to control itself.

Beyond full backing, alternate paths to gold backing might involve gold-convertible Treasury instruments[29] or allowing a parallel gold standard to operate temporarily alongside the current fiat dollar.[30] These could ease adoption while minimizing disruption, but they should be temporary so that we can quickly enjoy the benefits of gold's ability to police government spending. In addition, Congress could simply allow individuals to use commodity-backed money without fully replacing the current system.

Among downsides to a commodity standard, there is no guarantee that the government will stick to the price peg. Also, allowing a commodity standard to operate along with a fiat dollar opens both up for a speculative attack. Another downside is that even under a commodity standard, the Federal Reserve can still influence the economy via interest rate or other interventions. Therefore, at best, a commodity standard is not a full solution to returning to free banking. We have good reasons to worry that central banks and the gold standard are fundamentally incompatible—as the disastrous experience of the Western nations on their "managed gold standards" between World War I and World War II showed.

K-Percent Rule. Under this rule, proposed by Milton Friedman in 1960,[31] the Federal Reserve would create money at a fixed rate—say 3 percent per year. By offering the inflation benefits of gold without the potential disruption to the financial system, a K-Percent Rule could be a more politically viable alternative to gold.

The principal flaw is that unlike commodities, a K-Percent Rule is not fixed by physical costs: It could change according to political pressures or random economic fluctuations. Importantly, financial innovation could destabilize the market's demand for liquidity, as happened with changes in consumer credit patterns in the 1970s. When this happens, a given K-Percent Rule that previously delivered stability could become destabilizing. In addition, monetary policy when

Friedman proposed the K-Percent Rule was very different from monetary policy today. Adopting a K-Percent Rule would require considering what transitions need to take place.

Inflation-Targeting Rules. Inflation targeting is the current de facto Federal Reserve rule.[32] Under inflation targeting, the Federal Reserve chooses a target inflation rate—essentially the highest it thinks the public will accept—and then tries to engineer the money supply to achieve that goal. Chairman Jerome Powell and others before him have used 2 percent as their target inflation rate, although some are now floating 3 percent or 4 percent.[33] The result can be boom-and-bust cycles of inflation and recession driven by disruptive policy manipulations both because the Federal Reserve is liable to political pressure and because making economic predictions is very difficult if not impossible.

Inflation and Growth–Targeting Rules. Inflation and growth targeting is a popular proposal for reforming the Federal Reserve. Two of the most prominent versions of inflation and growth targeting are a Taylor Rule and Nominal GDP (NGDP) Targeting. Both offer similar costs and benefits.

Economists generally believe that the economy's long-term real growth trend is determined by non-monetary factors. The Fed's job is to minimize fluctuations around that trend nominal growth rate. Speculative booms and destructive busts caused by swings in total spending should be avoided. NGDP targeting stabilizes total nominal spending directly. The Taylor Rule does so indirectly, operating through the federal funds rate.

NGDP targeting keeps total nominal spending growth on a steady path. If the demand for money (liquidity) rises, the Fed meets it by increasing the money supply; if the demand for money falls, the Fed responds by reducing the money supply. This minimizes the effects of demand shocks on the economy. For example, if the long-run growth rate of the U.S. economy is 3 percent and the Fed has a 5 percent NGDP growth target, it expands the money supply enough to boost nominal income by 5 percent each year, which translates into 3 percent real growth and 2 percent inflation. How much money must be created each year depends on how fast money demand is growing.

The Taylor Rule works similarly. It says the Fed should raise its policy rate when inflation and real output growth are above trend and lower its policy rate when inflation and real output growth are below trend. Whereas NGDP targeting focuses directly on stable demand as an outcome, the Taylor Rule focuses on the Fed's more reliable policy levers.

The problem with both rules is the knowledge burden they place on central bankers. These rules state that the Fed should neutralize demand shocks but not respond to supply shocks, which means that it should "see through" demand shocks by tolerating higher (or lower) inflation. In theory, this has much to recommend it. In practice, it can be very difficult to distinguish between demand-side

destabilization and supply-side destabilization in real time. There also are political considerations: Fed officials may not be willing to curb unjustified economic booms and all too willing to suppress necessary economic restructuring following a bust.

Either rule likely outperforms a strict inflation target and greatly outperforms the Fed's current pseudo-inflation target. While NGDP targeting and the Taylor Rule have much to commend them, they might be harder to explain and justify to the public. Inflation targeting has an intelligibility advantage: Voters know what it means to stabilize the dollar's purchasing power. Capable elected officials must persuade the public that the advantages of NGDP targeting and the Taylor Rule, especially in terms of supporting labor markets, outweigh the disadvantages.

MINIMUM EFFECTIVE REFORMS

Because Washington operates on two-year election cycles, any monetary reform must take account of disruption to financial markets and the economy at large. Free banking and commodity-backed money offer economic benefits by limiting government manipulation, inflation, and recessionary cycles while dramatically reducing federal deficits, but given potential disruption to the financial system, a K-Percent Rule may be a more feasible option. The other rules discussed (inflation targeting, NGDP targeting, and the Taylor Rule) are more complicated but also more flexible. While their economic benefits are significant, public opinion expressed through the lawmaking process in the Constitution should ultimately determine the monetary-institutional order in a free society.

The minimum of effective reforms includes the following:

- **Eliminate "full employment" from the Fed's mandate, requiring it to focus on price stability alone.**

- **Have elected officials compel the Fed to specify its target range for inflation and inform the public of a concrete intended growth path.** There should be no more "flexible average inflation targeting," which amounts to ex post justification for bad policy.

- **Focus any regulatory activities on maintaining bank capital adequacy.** Elected officials must clamp down on the Fed's incorporation of environmental, social, and governance factors into its mandate, including by amending its financial stability mandate.

- **Curb the Fed's excessive last-resort lending practices.** These practices are directly responsible for "too big to fail" and the institutionalization of moral hazard in our financial system.

- **Appoint a commission to explore the mission of the Federal Reserve, alternatives to the Federal Reserve system, and the nation's financial regulatory apparatus.**

- **Prevent the institution of a central bank digital currency (CBDC).** A CBDC would provide unprecedented surveillance and potential control of financial transactions without providing added benefits available through existing technologies.[34]

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but Alexander Salter, Judy Shelton, and Peter St Onge, deserve special mention. The chapter reflects input from all the contributors, however, no views expressed herein should be attributed to any specific individual.

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SMALL BUSINESS ADMINISTRATION

Karen Kerrigan

MISSION STATEMENT

The U.S. Small Business Administration (SBA) supports U.S. entrepreneurship and small business growth by strengthening free enterprise through policy advocacy and facilitating programs that help entrepreneurs to launch and grow their businesses and compete effectively in the global marketplace.

OVERVIEW

Created almost 70 years ago, the SBA was launched under the Small Business Act with a mission to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns."[1] According to its current mission statement:

> The U.S. Small Business Administration (SBA) helps Americans start, grow, and build resilient businesses.
>
> SBA was created in 1953 as an independent agency of the federal government to aid, counsel, assist and protect the interests of small business concerns; preserve free competitive enterprise; and maintain and strengthen the overall economy of our nation.[2]

The SBA's founding mission has evolved over time as programs have been expanded or implemented, subject to the philosophical grounding of each Administration as well as assorted economic challenges and the occurrence of natural disasters. Because of its distinct role in the federal government, the SBA became

the default agency for providing disaster loans to small businesses, homeowners, renters, and organizations. As a result, hundreds of billions of taxpayer dollars have been funneled through the agency to businesses and individuals over the years.

Some SBA programs are effective; others are not. The largest program in SBA's history, the Paycheck Protection Program (PPP), has been credited with saving millions of jobs during the COVID-19 pandemic.[3] A conservative Administration would rightly focus on saving small businesses during such a crisis. At the same time, however, various SBA programs have generated waste, fraud, and mismanagement of taxpayer dollars.

For example, and more recently, more than $1 trillion in COVID-19 relief was distributed through the SBA.[4] The SBA's EIDL (Economic Injury Disaster Loan) Advance program in particular shows the dangers that can come with direct government lending. EIDL Advance provided direct cash grants and loans to small businesses. The SBA Office of Inspector General "identified $78.1 billion in potentially fraudulent EIDL loans and grants paid to ineligible entities,"[5] which represented more than half of all funds spent through the program. Although PPP worked through private lenders and as a result experienced relatively less fraud than EIDL experienced, it is estimated "that at least 70,000 [PPP] loans were potentially fraudulent."[6]

ORIGIN, HISTORY, AND CORE FUNCTIONS

In 1954, the agency began to execute such core functions as "making and guaranteeing loans for small businesses," "ensuring that small businesses earn a 'fair proportion' of government contracts and sales of surplus property," and "provid[ing] business owners with management and business training."[7]

In 1970, President Richard Nixon's Executive Order 11518 enhanced the agency's advocacy role by providing for the "increased representation of the interests of small business concerns before departments and agencies of the United States Government."[8] This advocacy role was strengthened with the adoption of the Small Business Amendments of 1974,[9] which established the Chief Counsel for Advocacy, and was then reinforced and expanded in 1976 with the creation of the Office of Advocacy, providing additional resources to ensure that small businesses had a voice in the regulatory process.

In 1980, the Regulatory Flexibility Act (RFA)[10] further strengthened the Office of Advocacy's role, providing accountability across federal agencies to ensure that they considered the impact of their rulemakings on small businesses. The RFA requires federal agencies "to consider the effects of their regulations on small businesses and other small entities,"[11] and the Office of Advocacy is charged with ensuring that federal agencies abide by the law and is required to provide an annual report to the President and the Senate and House Committees on Small Business.[12] In addition, the Trade Facilitation and Trade Enforcement Act (TFTEA) of 2016[13]

established a new role for the Office of Advocacy: "to facilitate greater consideration of small business economic issues during international trade negotiations."[14]

This small office has been relatively effective over the years—and more productive during periods when a strong Chief Counsel for Advocacy has been installed to utilize the Office of Advocacy's authority aggressively to provide a check on regulatory overreach. The office is one of the bright spots within the SBA that a conservative Administration could supercharge to dismantle extreme regulatory policies and advance limited-government reforms that promote economic freedom and opportunity.

Currently, the SBA's four core functions include:

- **Access to capital.** SBA maintains assorted financing and lending programs for small businesses, from microlending to debt and equity investment capital.
- **Entrepreneurial development programs.** SBA provides "free" or low-cost training at more than 1,800 locations and through online platforms and webinars.
- **Government contracting support programs.** Through goals established by the SBA for federal departments and agencies, the broader goal is to ensure that small businesses win 23 percent of prime contracts.
- **Advocacy.** This independent office within the SBA works to ensure that federal agencies consider small businesses' concerns and impact in rulemakings. The office also conducts small-business research.

BUDGETARY FLUCTUATION

SBA's budget and programs have expanded significantly under some Administrations and have been scaled back under others. President Ronald Reagan cut the SBA's budget by more than 30 percent, and his annual budgets regularly proposed to eliminate the agency altogether.[15] Under President George W. Bush, SBA Administrator Hector Barreto said that SBA's goal was "to do more with less,"[16] but this changed because of Hurricane Katrina and a surge in disaster funding. In 2016, President Barack Obama considered streamlining and combining SBA programs and other business-related agencies and programs under one entity at the U.S. Department of Commerce, but opposition within the small-business lobby in Washington scuttled the effort.[17]

In general, SBA budget fluctuations have been driven by several factors such as efforts by Administrations either to cut or to greatly expand programs, the need to boost disaster assistance because of economic or weather-related events, business

loan credit subsidy costs, and miscellaneous program "enhancements" to support small businesses through economic challenges or circumstances. As noted by the Congressional Research Service:

> Overall, the SBA's appropriations have ranged from a high of over $761.9 billion in FY2020 to a low of $571.8 million in FY2007. Much of this volatility is due to significant variation in supplemental appropriations for disaster assistance to address economic damages caused by major hurricanes and for SBA lending program enhancements to help small businesses access capital during and immediately following recessions. For example, in FY2020, the SBA received over $760.9 billion in supplemental appropriations to assist small businesses adversely affected by the novel coronavirus (COVID-19) pandemic.[18]

The CRS further notes that "[o]verall, since FY2000, appropriations for SBA's other programs, *excluding supplemental appropriations*, have increased at a pace that exceeds inflation."[19]

In terms of current loan volume, the SBA "reached nearly $43 billion in funding to small businesses, providing more than 62,000 traditional loans through its 7(a), 504, and Microloan lending partners and over 1,200 investments through SBA licensed Small Business Investment Companies (SBICs) for Fiscal Year (FY) 2022."[20] The agency's total budgetary resources for FY 2022 amount to $44.25 billion, which represents 0.4 percent of the FY 2022 U.S. federal budget.[21]

HISTORY OF MISMANAGEMENT

Throughout its history, various SBA programs and practices have generated negative news headlines and scathing Government Accountability Office (GAO) and Inspector General (IG) reports that have centered on mismanagement, lack of competent personnel and/or systems, and waste, fraud and abuse.[22] From the 8a program[23] to Hurricane Katrina[24] to the more current COVID-19 (EIDL) program and PPP lending program,[25] the SBA has managed to maintain its lending role even when repeated system failures have affected its distribution of funds.

Congress has been somewhat responsive, pressuring the SBA to clean up fraud-related matters within its COVID-19 lending and grant programs.[26] Republicans in the U.S. House of Representatives have gone farther, specifying that the SBA needs to improve transparency and accountability and deal with mission creep, the expansion of unauthorized programs, and structural and reporting deficiencies that have allowed mismanagement and fraud to reoccur, largely through massive supplemental appropriations.[27]

The SBA is led by an Administrator (currently a member of the President's Cabinet) and a Deputy Administrator. Senate-confirmed appointees include

the Administrator, Deputy Administrator, Chief Counsel for Advocacy, and Inspector General.

Entrepreneurs and small businesses require limited-government policies that do not impede their risk-taking and growth. A future Administration can leverage and strengthen core SBA functions that have been fairly effective at reining in and calling attention to costly regulations and policies that are harmful to small businesses. This core advocacy function is aided both by statutory authority and by a network of small-business organizations and allies that support limited-government policies.[28]

Moreover, an effective SBA Administrator and leadership team can work and advocate across the federal government to ensure that extreme regulatory policies—or anticompetitive rules and actions that may favor big businesses over small businesses or international competitors over American small businesses—are dismantled or do not progress when proposed.

MISSION CREEP AND ENLARGEMENT

As noted, Republicans in the U.S. House of Representatives have evidenced concern about SBA mission creep and the need to make a sprawling, unaccountable agency more focused and operationally sound. Moreover, there is unease that the agency has moved from being open to any eligible small business searching for support to being hyperfocused on "disproportionately impacted," politically favored, or geographically situated small businesses and entrepreneurs.

Today, initiatives aimed at "inclusivity" are in fact creating exclusivity and stringent selectivity in deciding what types of small businesses and entities can use SBA programs. For example, even though the SBA under President Donald Trump proposed a rule to remove all of the unconstitutional religious exclusions from its regulations[29] to conform with Supreme Court decisions that have made their unconstitutionality clear, the SBA has not acted on the proposed rule and still uses religious exclusions in determining eligibility for business loans. Several other specific concerns include but are not limited to:

- The SBA's request to become a "designated voter agency" in response to President Biden's executive order on "Promoting Access to Voting."[30]
- The creation of duplicative channels and "pilot programs" for the delivery of business training rather than working through existing counseling partners. The programs are largely duplicative of private, state and local government, and educational system offerings.[31]
- A push to expand direct government lending.[32]

THE SBA IN A CONSERVATIVE ADMINISTRATION

Reforming and restructuring the SBA under a conservative Administration would meet the needs of America's small-business owners and entrepreneurs, not special interests in Washington, D.C. Entrepreneurs believe the SBA is fairly archaic in its operations and programming and must be transformed to serve small businesses in the modern economy effectively.[33] Therefore, a restructured and reformed SBA would end the long-term deficiencies, practices, and problems that have prolonged the decades-long cycle of waste, fraud, and mismanagement. Moreover, the SBA Administrator and leadership can provide significant value to all small businesses by strongly advocating for their policy needs and fostering an agencywide culture that values all small-business owners and does not exclude certain groups. Under a conservative Administration, success would yield:

- A highly qualified SBA Administrator and leadership team that can competently run the agency and enthusiastically advocate for the policy issues and needs of small-business owners and entrepreneurs.

- A tighter, more focused SBA that concentrates on congressionally authorized programs.

- An accountable SBA Administrator and staff who report regularly to Congress, respond on a timely basis to requests from individual Members of Congress, and satisfactorily implement or respond to IG and GAO recommendations.

- A full accounting of and an end to waste, fraud, and abuse in all COVID-19 relief programs, including the PPP and EIDL programs, and action that follows the rule of law by ensuring that loan recipients who are not eligible for loan forgiveness or who falsified loan applications either pay back the funds or are referred to law enforcement.

- An end to SBA direct lending.

- An approach to small-business lending and capital programs that supports a resilient small-business supply chain (for example, by financing technological upgrades and capital expenditures).

- Outreach to *all* small businesses and those that are eligible for program support across sectors and geographic areas. Through congressionally authorized programs and collaboration with partners and business associations, the SBA could use the latest technology and platforms to

implement relevant initiatives to reach small businesses. Programs would be nonduplicative and implemented on a first-come, first-served basis.

- A modern, revamped, and streamlined SBA that better utilizes current technology and platforms for operations, for reporting, and in its programs to reach, service, and engage small businesses.

- An Office of Advocacy that is strengthened by a renewed mandate and additional resources to protect against overregulation along with a research agenda that includes measuring the total cost that federal regulation imposes on small businesses.

Accountability and Managerial Practice. The SBA lacks accountability and managerial practices to measure the effectiveness, success, and integrity of its various programs. As a future Administration evaluates agency structure and the particulars of how the SBA is spending appropriated funds, it should immediately require actions and procedures to compel a culture of accountability and performance. Specifically:

- **Require performance metrics and internal procedures to safeguard taxpayer dollars and program integrity.** As noted in an October 2022 IG report, failure to adopt procedures that would reliably capture data and information for various programs, coupled with significant challenges and weaknesses regarding IT investments, systems development, and security controls, presents significant risks to program integrity and increased risk of waste, fraud, and abuse.[34] Addressing these shortcomings and risks should be a priority challenge and action item for the next Administration. As underscored by the Inspector General in his introduction to the report, "Pandemic response has, in many instances, magnified the challenging systemic issues in SBA's mission-related work."[35]

- **Review all internal government watchdog recommendations and require that SBA management implement or address outstanding and ongoing OIG and GAO recommendations within a specified time frame (ideally within 90 days of a recommendation) and on an ongoing basis.**

Strengthening the Office of Advocacy. The SBA Office of Advocacy (Advocacy) is "an independent office" within the SBA.[36] It accounts for about one one-thousandth of SBA spending and 0.75 percent of SBA personnel. Under the Regulatory Flexibility Act, both under its current authority and with suggested

reforms, the Office of Advocacy could be a powerful weapon against the administrative state's regulatory extremism.

- **Amend the RFA so that all agencies are required to provide a copy of any proposed rule (other than bona fide emergency rules) along with initial regulatory flexibility analysis to the Office of Advocacy at least 60 days before a notice of proposed rulemaking is submitted for publication in the *Federal Register*.** The Office of Advocacy would submit comments to agencies within 30 days, and each agency would have to consider these comments, make changes in the proposed rule based on those comments, or explain in a revised regulatory flexibility analysis why it chose not to change the proposed rule. The Office of Advocacy's pre-proposing comments would be published on the agencies' and its own websites.

  RFA economic analysis should be expanded to include indirect costs along with direct costs. In addition, the next Administration should require other agencies to seek Advocacy's input. Currently, other agencies deny Advocacy the ability to enforce their duty to consider the effect of regulations on small entities by construing their regulations as not having significant economic impact, which would otherwise serve as a trigger for Advocacy's input. Congress should presumptively exempt small businesses from new agency rules to force agencies to seek Advocacy's input and permit new rules to apply to small businesses only with Advocacy signoff under specified criteria.

- **Increase the Office of Advocacy's budget by at least 50 percent ($4.6 million).** This would allow Advocacy to hire approximately 25 attorneys, economists, and scientists and enhance its role in the regulatory process.

- **Explicitly direct federal agencies to comply with the RFA.** This would be similar to the approach adopted by President Trump in his January and February 2017 executive orders directing agencies to relieve the cost and burden of regulation on business.[37] Advocacy should organize regional roundtables, onsite small-business visits, and an online platform to hear directly from small businesses and entities as it did from June 2017 through September 2018.[38] This activity produced 26 letters to federal agencies and highlighted specific regulations that need reform and how Congress had addressed the most burdensome rules through the Congressional Review Act.[39]

COVID-19 Lending Program Accountability and Cleanup. A major immediate priority for the next Administration should be a final accounting and accelerated cleanup of fraudulent COVID-19 loan and grant activity. As noted by the SBA IG, "managing COVID-19 stimulus lending is the greatest overall challenge facing SBA, and it may likely continue to be for many years as the agency grapples with fraud in the programs...."[40] The next Administration should:

- **Consider bringing in private-sector support and expertise to close out these programs.** Forgiveness and fraud must be dealt with as swiftly as possible, and law enforcement officials must pursue fraud vigorously. Entities receiving PPP loans that did not meet eligibility for forgiveness must be required to pay back the money.

  For example, under the CARES Act,[41] PPP loan applicants generally were eligible only if, together with all their affiliates, they had no more than 500 employees. Numerous Planned Parenthood affiliates self-certified eligibility for PPP loans during the initial wave of loans that were governed by the CARES Act's size requirement. Many Senators and Representatives asserted that these Planned Parenthood organizations were ineligible because—considered together with their affiliates—they exceeded the maximum eligible size.[42] The Trump Administration SBA notified several Planned Parenthood PPP recipients of its preliminary determination of their ineligibility and of SBA's authority to take various actions against applicants that falsely certified their eligibility.[43]

  To date, despite continued oversight attempts by Members of Congress,[44] the SBA has taken no action on the Planned Parenthood loans other than to forgive them, and in 2021, it approved new PPP loans to Planned Parenthood affiliates.[45]

- **Cooperate with ongoing congressional oversight efforts and determine whether SBA has authority to reverse the forgiveness decisions.** If it does have that authority, the SBA should reverse the forgiveness decisions for the subject loans, reiterate its preliminary determinations of ineligibility, investigate the matter more thoroughly, and take all appropriate action when its investigation concludes. Regardless of whether it reverses its forgiveness, if its investigation uncovers evidence that Planned Parenthood affiliates or any other loan recipients knowingly misrepresented their eligibility in their applications, the SBA should make appropriate referrals to the Department of Justice.

Disaster Loan Program and Direct Lending. The SBA's disaster loan program provides low-interest loans to personal, business, and nonprofit borrowers following a federally declared disaster. The program suffers from problems of coordination with Federal Emergency Management Administration (FEMA) disaster assistance. For example, disaster relief applicants have an incentive to avoid being approved for SBA disaster loans in order to increase the amount of FEMA assistance for which they are eligible. Moreover, the availability of disaster loans reduces individuals' incentives to purchase disaster-related insurance. More than 90 percent of SBA disaster loans are loans to individuals such as homeowners, not to small businesses.

In view of the challenges the SBA has experienced in its administration of this program, as well as the fraud and abuse in the EIDL COVID-19–related program and the IG's concern that the systemic problems within this lending program undermine the SBA's work, the next Administration should:

- **Work with Congress to assess the extent to which disaster loans should be offered by another agency rather than the SBA and explore private-sector channels for administering the loans.**

- **Specify clearly that no new direct lending programs will be developed at the SBA.**

Eligibility of Religious Entities for SBA Loans. Current SBA regulations[46] and SBA Form 1971[47] make certain religious entities ineligible to participate in several SBA loan programs. The Trump Administration proposed a rule that would remove the provisions on the ground that they violate the First Amendment.[48] Subsequent Supreme Court decisions have made their unconstitutionality clearer.[49]

In an April 3, 2020, letter to Congress pursuant to 28 U.S. Code § 530D,[50] the Trump Administration SBA advised that two such provisions violate the Free Exercise Clause of the First Amendment and that it therefore would not enforce them. On January 19, 2021, the Trump Administration SBA proposed a rule to remove all of the unconstitutional religious exclusions from its regulations.[51] The SBA has not acted on the proposed rule.

A similar religious exclusion once appeared in the regulation governing eligibility for SBA Business Loan Programs,[52] but it was removed in a June 2022 final rule that noted tension with the First Amendment and Supreme Court precedent.[53] That final rule announced that the SBA would nonetheless continue to make religious eligibility determinations for business loan applicants to comply with putative Establishment Clause requirements,[54] but Supreme Court precedent and Office of Legal Counsel memoranda refute the notion that large government-backed loan programs raise any Establishment Clause concerns.[55]

The SBA uses the same "Religious Eligibility Worksheet," SBA Form 1971, to make eligibility determinations for all affected programs, including the Business Loan Programs. Thus, the SBA continues to act as though the unconstitutional regulation were still in place, and there is no Establishment Clause basis for doing so. The next Administration should immediately:

- **Notify Congress under 28 U.S. Code § 530D that it will not enforce these unconstitutional regulations.**
- **Take down SBA Form 1971.**
- **Finalize the Trump Administration's proposed rule or publish its own updated proposed rule to remove the unconstitutional regulations.**

Small Business Innovation Research and Small Business Technology Transfer Programs. The SBA "coordinates and monitors the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs for all federal agencies with extramural budgets for research or research and development (R/R&D) in excess of the expenditures established in sections 9(f) and 9(n) of the Small Business Act."[56] The SBIR and STTR Extension Act of 2022 extended these programs from September 30, 2022, through September 30, 2025.[57]

SBIR requires that 3.2 percent of spending by agencies with extramural R&D budgets of $100 million or more must be directed to small businesses. STTR allocates 0.45 percent of federal research spending to small firms.[58] Research has shown that this small portion of federal R&D spending is disproportionately effective.[59] The SBIR program has consistently demonstrated its ability to fund advanced technologies through to private-market viability and invests more in America's heartland than venture capital invests.[60]

SBIR and STTR have overcome the tendency of federal contracting officers to deal only with large firms that are familiar to them and have the expertise and lobbying clout to navigate the federal procurement process. The next Administration should:

- **Continue the SBIR and SBTT programs as they successfully fund the next wave of technological innovation to compete with Big Tech.**
- **Urge Congress to expand the amount that other agencies are required to set aside from their general R&D budgets for the SBIR program.**
- **Ensure the enactment of stricter rules requiring that SBIR funds must be expended on capital investments in the United States.**

Domestic Manufacturing and Small Business. Small businesses in the manufacturing sector face shortfalls in access to capital.[61] As manufacturing employment, domestic business investment, and non–information technology output have declined,[62] expectations for market returns and the capital available to small manufacturing enterprises have diminished. This is especially true for capital-intensive sectors like transportation and energy that require large up-front investments and relatively lower-margin sectors like plastics, textiles, furniture, and agriculture. Yet these industries and others like them traditionally have been the backbone of American manufacturing employment. They also are sources of self-sufficiency and resilience at a time when global supply chains are increasingly uncertain.

The public policy problems that are caused by declining small manufacturing are especially acute when it comes to the production of advanced technologies. Other agencies and programs invest immense taxpayer resources in basic science and research. Over time, that research results in some breakthrough technologies, but when it is time to put these breakthroughs into practice by manufacturing goods and services, much of the necessary productive capacity is offshore.[63] For many technologies, the American economy lacks the capacity to "scale up" innovations that might not be immediately profitable. Instead, those technologies are put into practice abroad. In this way, foreign companies and foreign productive sites buy and implement taxpayer-funded American technologies.

The SBA's existing programs should be reformed to expand the private market for capital in small-manufacturer expansion. The next Administration should:

- **Ask Congress to make available a category of Section 7(a) loans with a larger available principal that is used to finance manufacturing facility construction and equipment upgrading.** The proposed SBA Reauthorization and Improvement Act of 2019, for example, would have increased the maximum loan principal to $50 million for advanced manufacturing construction and upgrading.[64] The Section 7(a) loan program operates through private lenders and guarantees a portion of private-sector loans made to qualifying small businesses. The maximum principal available is $5 million, but small businesses in capital-intensive sectors require significantly larger amounts of capital to finance up-front capital costs.

- **Reform the Small Business Investment Company (SBIC) program to refocus its support on small businesses rather than technology startups only.** The SBIC program operates through private venture capital and private equity funds by providing eligible funds with guaranteed debt financing to support investments in small businesses. However, the program

largely duplicates private-sector venture capital to the extent that the sector receiving much of its support is software and information technology, which already receive the lion's share of venture capital investment.[65]

In addition, Congress should reform the SBIC program to make its financing more favorable to capital-intense investments and small manufacturers. The Health, Economic Assistance, Liability Protection, and Schools (HEALS) Act, introduced in 2020,[66] and American Innovation and Manufacturing Act, introduced in 2021,[67] would allow SBIC to offer longer-term financing to manufacturers and make the program more fiscally sustainable.

Small-Business Size Standard Modernization. Many small-business programs both inside and outside the SBA use the SBA's definition of "small business." Under the Small Business Act, the SBA is tasked with defining what counts as a small business and ensuring that the definition varies from industry to industry to reflect differences in regular size by industry. However, the SBA's small-business size standards reflect a one-size-fits-all approach under which all businesses within its size standard are considered small businesses for all eligible purposes, from government contracting preferences to eligibility for SBA loans through private banks.

At the same time, the SBA is an outlier among competing economies in not considering medium-sized enterprises along with small businesses, often referred to collectively as small and medium-sized enterprises (SMEs). Medium-sized and regional businesses are increasingly critical to maintaining competition. The next Administration should:

- **Encourage Congress to create a "medium-sized business" classification with its eligibility for programs confined to access to capital programs from projects for which credit elsewhere does not exist.**

SBA POLICY PRIORITIES FOR 2025 AND BEYOND

Legislation. The new Administration can support SBA reform legislation proposed in Congress that aligns with key measures outlined in this chapter. It also can support legislative initiatives that would help SBA to focus on its core statutory activities such as capital access, federal contracting opportunities, and regulatory advocacy. For example:

- The IMPROVE the SBA Act[68] would strengthen accountability, transparency, and oversight of the SBA and aligns with many of the reforms outlined in this chapter.

- The Small Business Regulatory Flexibility Improvements Act[69] would require federal agencies to perform more thorough RFA economic analysis and provide a rationale for proposed regulations. It also would waive fines for certain first-time paperwork violations.

- The Small Business Regulatory Enforcement Fairness Act[70] (SBREFA) panel process allows small businesses to provide input on agency rulemakings, gives participating small businesses greater procedural rights, and allows for judicial review of agency violations of the SBREFA panel process. SBREFA panel requirements should be extended to all federal agencies.

- The Fair and Open Competition Act[71] would disallow the use of project labor agreements (PLAs) in federal contracting as required in President Biden's Executive Order 14063,[72] which puts small businesses at a competitive disadvantage and works against the SBA's governmentwide contracting goal for small businesses.

- The JOBS Act 4.0[73] would advance regulatory improvements and modernization of various Securities and Exchange Commission (SEC) rules to enhance capital formation and access.

ORGANIZATIONAL ISSUES AND BUDGET

Administrator and Key Staff. The position of Administrator should not be considered a symbolic or messaging-related position as some past Administrations have viewed it. Rather, the Administrator should have the requisite experience, skills, and knowledge to ensure that the SBA fulfills its statutory authorities.

Because much of the SBA's statutory authority relates to financing and regulatory policy, and in order to make the SBA a more effective agency within the Administration, the Administrator and his or her key staff should have experience in small-business finance and investment and/or administrative law. For example, during the COVID-19 pandemic, the SBA was often forced to outsource key decisions and administrative follow-through to the Department of the Treasury. The SBA Administrator and leadership team must share the President's mission and vision and execute the Administration's policies effectively.

Budget

The next Administration should undertake a comprehensive review of the effectiveness of its various loan and grant programs and provide a report to Congress within six months. The report should rank programs by cost-effectiveness. In the interim, the roughly $1 billion overall agency budget should be held constant until the report is considered, after which Congress should terminate

ineffective programs, consolidate duplicative functions, and reallocate resources to more effective programs (such as the Office of Advocacy) or consider reducing the SBA budget.

Personnel Challenges

The SBA continues to expand programs and initiatives without first documenting the effectiveness of existing programs or whether they involve areas in which the agency lacks staff expertise. For example, the SBA wants to expand the number of licensed Small Business Lending Companies (SBLCs), implement a new "Mission-Based SBLC," and remove a requirement for loan authorization within the 7(a) and 504 Loan programs and rely solely on a lender's documents.

Various IG reports have noted that the lack of skilled employees within the SBA has fueled fraud and mismanagement in COVID-19 lending programs, and congressional leaders have expressed alarm about these "changes that haphazardly overextend the SBA's responsibilities at a time when they are devastated by fraud and underperforming on their core mission of serving the nation's 33 million small businesses."[74] A conservative Administration should rein in these idealistic and impractical efforts, get current programs under control and properly staffed with people who can manage and perform competently, and outsource efforts where private-sector expertise is appropriate and more efficient.

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but David Burton and Caleb Orr deserve special mention. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

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26

TRADE

THE CASE FOR FAIR TRADE

Peter Navarro

> *For decades the world has struggled with a shifting maze of punitive tariffs, export subsidies, quotas, dollar-locked currencies, and the like. Many of these import-inhibiting and export-encouraging devices have long been employed by major exporting countries trying to amass ever larger [trade] surpluses.*
>
> Warren Buffett, CEO, Berkshire Hathaway[1]

> *The Chinese government is implementing a comprehensive, long-term industrial strategy to ensure its global dominance.... Beijing's ultimate goal is for domestic companies to replace foreign companies as designers and manufacturers of key technology and products first at home, then abroad.*
>
> U.S.–China Economic and Security Review Commission[2]

The United States of America is the world's dominant superpower and remains the world's arsenal of democracy. To maintain that global positioning—and thereby best protect the homeland and our own democratic institutions—it is critical that the United States strengthen its manufacturing and defense industrial base at the same time that it increases the reliability and resilience of its globally dispersed

supply chains. That will necessarily require the onshoring of a significant portion of production currently offshored by American multinational corporations.

Trade policy can and must play an essential role in an American manufacturing and defense industrial base renaissance. However, several major challenges in the international trading environment are pushing America in the opposite direction.

The first challenge is rooted in MFN: the "most favored nation" rule of the World Trade Organization (WTO). According to the MFN rule, WTO members must apply the lowest tariffs that they apply to the products of any one country to the products of every other country.[3] However, WTO members can charge higher tariffs if they apply these nonreciprocal tariffs to all countries.

The practical result has been the systematic exploitation of American farmers, ranchers, manufacturers, and workers through higher tariffs institutionalized by MFN. In turn, this unfair and nonreciprocal trade has resulted in chronic U.S. trade deficits with much of the rest of the world. This systemic trade imbalance serves as a brake and bridle on both GDP growth and real wages in the American economy while encumbering the U.S. with significant foreign debt.

The second challenge is part of the broader existential threat posed by the Chinese Communist Party (CCP) in its quest for global dominance. That challenge is rooted in the CCP's continued economic aggression, which begins with mercantilist and protectionist trade policy tools such as tariffs, nontariff barriers, dumping, counterfeiting and piracy, and currency manipulation. However, Communist China's economic aggression also extends to an intricate set of industrial policies and technology transfer–forcing policies that have dramatically skewed the international trading arena.

Both the unfair, unbalanced, and nonreciprocal trade institutionalized by the WTO and Communist China's economic aggression are weakening America's manufacturing and defense industrial base even as the fragility of globally dispersed supply chains has been brought into sharp relief by the COVID-19 pandemic with its associated lockdowns and other disruptions and by the Russian invasion of Ukraine. Russian revanchism, in particular, has demonstrated once again how bad actors on the world stage can use trade policy (for example, export restraints on natural gas) as a weapon of war.

LAYING THE TRADE DEFICIT PREDICATE

The great football coach Bill Parcells once said, "You are what your record says you are." America's record on trade—specifically American's chronic and ever-expanding trade deficit—says that America is the globe's biggest trade loser and a victim of unfair, unbalanced, and nonreciprocal trade.

During the first year of the Biden Administration, the overall U.S. trade deficit, including goods and services, soared by 29 percent, from $654 billion in 2020 to $845 billion in 2021.[4] Over the same time period, imports of consumer goods,

TABLE 1

America’s Trade Deficit in Goods and Services with Major Trading Partners

FY 2022 FIGURES FOR SELECTED AREAS, IN BILLIONS OF DOLLARS

Country	Deficit	Country	Deficit
Communist China	-338.1	South Korea	-35.6
European Union	-192.6	Thailand	-36.6
Mexico	-108.2	India	-33.8
Vietnam	-99.8	Malaysia	-30.9
Canada	-72.4	Switzerland	-19.0
Japan	-55.0	Indonesia	-21.1
Ireland	-54.6	**Total**	**-1,138.0**
Taiwan	-41.1		

SOURCE: Exhibit 14, “U.S. Trade in Goods by Selected Countries and Areas: 2022,” in press release, “Monthly U.S. International Trade in Goods and Services, October 2022,” U.S. Department of Commerce, U.S. Census Bureau, December 6, 2022, https://www.census.gov/foreign-trade/Press-Release/ft900/ft900_2210.pdf (accessed March 21, 2023).

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capital goods, and the category of foods, feeds, and beverages were the highest on record, and imports of industrial supplies and materials were the highest since 2014.

As for the U.S. trade deficit in goods, which primarily measures manufacturing output, Table 1 catalogues that deficit for the top 13 countries plus the European Union (EU) in fiscal year (FY) 2022. Note that the trade deficit in goods with Communist China is by far the largest: It accounts for fully one-third of that deficit and is more than twice the size of the deficit with the EU.

These trade deficit statistics implicitly measure the large amounts of America’s manufacturing and defense industrial base and supply chains that have been offshored to foreign lands. Such offshoring not only suppresses the real wages of American blue-collar workers and denies millions of Americans the opportunity to climb up the rungs of the ladder to the middle class, but also raises the specter of a manufacturing and defense industrial base that, unlike our experience in World Wars I and II, will not be able to provide the weapons and matériel that would be needed should America enter another major world war or seek to assist a major ally like Europe, Japan, or Taiwan. It is wise to recall Stalin’s admonition that “quantity

has a quality of its own." In World War II in particular, it was not just the brave soldiers, sailors, and pilots who beat the Nazis and Imperial Japan. It was America's factories—its "arsenal of democracy"—that overwhelmed the Axis forces.

In the wake of the COVID-19 pandemic, almost certainly spawned in a CCP biological weapons lab in Wuhan, China,[5] global supply chains have been under significant pressures from lockdown policies, energy price shocks, and other disruptions, including labor market disruptions. At the height of the pandemic, the rising geopolitical risk associated with globalized supply chains was underscored when Communist China, which controls much of the world's pharmaceutical production and supply chains, threatened to plunge America "into a mighty sea of coronavirus" through pharmaceutical export controls[6] if American politicians dared to investigate what happened at the Wuhan lab.

Add all this up, and America's trade situation and massive trade imbalances pose not only a severe economic security threat, but also a national security threat. As President Donald Trump indicated in announcing his 2017 National Security Strategy, "economic security *is* national security."[7]

CHALLENGE #1: UNFAIR AND NONRECIPROCAL TRADE INSTITUTIONALIZED IN WTO RULES

> *Tonight, I am also asking you to pass the United States Reciprocal Trade Act, so that if another country places an unfair tariff on an American product, we can charge them the exact same tariff on the exact same product that they sell to us.*
>
> President Donald J. Trump, 2019 State of the Union Address[8]

The World Trade Organization, with its 164 members, governs international trade rules. Under its most favored nation (MFN) rule, each WTO member must apply the lowest tariffs it applies to the products of any one country to the products of every other WTO country. Importantly, nothing in the MFN rule requires a WTO member to provide equal—that is, reciprocal or mirror—tariff rates to its trading partners. Rather, under MFN, WTO members can charge systematically higher tariffs to other countries to the extent negotiated in their WTO tariff schedules so long as they apply those same higher tariffs to all countries.

As a poster child for the kind of nonreciprocal tariffs that American manufacturers often face, the MFN tariff for automobiles applied by the U.S. is only 2.5 percent. In contrast, the EU charges 10 percent, Communist China 15 percent, and Brazil 35 percent. Similarly, while the U.S. applies an MFN tariff rate of 6.2 percent on the rice it buys from Malaysia, Malaysia applies an ad-valorem equivalent tariff of 40 percent on rice from the U.S. Meanwhile, European milk producers are shielded

TABLE 2

Nonreciprocal Tariff Rates Under "Most Favored Nation" Rule

132-Country Sample	Foreign Partner Applies Higher Tariff	U.S. Applies Higher Tariff	U.S. and Foreign Partner Apply Same Tariff
Number of HS6 Product Lines	467,015	141,736	87,319
Percent of HS6 Product Lines	67%	20%	13%
Tariff Differential	12.3%	8.7%	0.0%

NOTE: HS6—Harmonized Commodity Description and Coding System.
SOURCE: United Nations Conference on Trade and Development, "Trade Analysis Information System," https://databank.worldbank.org/source/unctad-%5E-trade-analysis-information-system-(trains) (accessed March 21, 2023).

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by 67 percent tariffs while American milk producers benefit only from a 15 percent tariff on foreign imports.[9]

From the perspective of strategic game theory, the WTO's MFN rule provides little or no incentive for higher-tariff countries to lower their tariffs. Rather, under these conditions, the dominant strategy of any relatively high-tariff country is simply to maintain those high tariffs while free riding off the lower-tariff countries.

The U.S. is disproportionately harmed by the WTO's nonreciprocal tariff regime. The countries that are hurt most by the WTO's nonreciprocal tariff regime are those like the United States that charge the lowest tariffs on average. This point is illustrated in Table 2, which reports information on nonreciprocal tariffs that are applied under the MFN rule on product lines at the six-digit level of the Harmonized Commodity Description and Coding System (HS6).[10]

Table 2 presents results for a broad sample of 132 countries that account for more than 60 percent of total U.S. trade and 98 percent of U.S. trade that is not covered by free trade agreements (FTAs). Within this broad sample of 132 countries, U.S. exporters face higher tariffs in 467,015 different cases compared to 141,736 cases in which the U.S. charges higher nonreciprocal rates. In other words, U.S. exporters face higher tariffs more than three times as often as the U.S. applies higher tariffs.

Moreover, when American exporters face higher tariffs, the nonreciprocal tariffs are typically much higher. As row 4 of Table 2 indicates, in the 467,015 cases in which foreign partners charge higher tariffs, the average rate applied by the foreign partners is 12.3 percentage points above the rate applied by the U.S. In contrast,

in the 141,736 cases in which the U.S. charges the higher tariff, the average U.S. applied rate is only 8.7 percentage points higher than the average applied tariff of the foreign partner.

Separately, Communist China levies higher tariffs on 10 products for every one Chinese product that is subject to a U.S.-applied higher tariff.[11] India's ratio is even higher at 13 to one. Further, both Communist China and India also feature significant nontariff barriers. Collectively, these higher nonreciprocal tariffs in Communist China and India block American exporters from selling goods at competitive prices to more than one-third of the world's population.

Trade Deficit Impacts of the U.S. Reciprocal Trade Act. Under current United States laws and regulations, an American President has limited ability to fight back against the higher MFN tariffs now being levied against American workers, farmers, ranchers, and manufacturers. Accordingly, behind the WTO's protective MFN shield, America's free-riding trading partners have little or no incentive to come to the bargaining table to negotiate lower tariffs.

To address this nonreciprocity stalemate, President Trump urged Congress in his 2019 State of the Union address to pass the United States Reciprocal Trade Act (USRTA).[12] Under the USRTA, the President would have the authority to bring any American trading partner that is currently applying higher nonreciprocal tariffs to the negotiating table. If that trading partner refused to lower tariffs to U.S. levels, the President then would have the authority to raise U.S. tariffs to match or "mirror" the foreign partner's tariffs.

The USRTA was introduced on January 24, 2019, by then-Representative Sean Duffy (R–WI). The following month, a Harvard–Harris poll of 1,792 registered voters found that 80 percent of respondents supported the USRTA.[13] As Representative Duffy noted at the time, the purpose of granting the President these authorities was not to raise tariffs. Rather, it was to give the President, working in close consultation with Congress, a sophisticated and targeted tool that he could use to force other countries to lower their tariffs and nontariff barriers.[14]

Following the introduction of the USRTA, the White House Office of Trade and Manufacturing Policy (which the author directed) ran simulations to estimate the impact that implementation of the USRTA might have on the overall U.S. trade deficit in goods and the large bilateral trade deficits the U.S. runs with many of its major trading partners. The sample consisted of the same 132 trading partners used in Table 2 above.[15] The results underscore the unfair and unbalanced nonreciprocal trade the U.S. is forced to accept under WTO MFN rules.

Two Scenarios. Scenario One in Table 3 assumes that our trading partners lower their applied tariff rates on specific products to U.S. levels in cases where their applied tariffs are higher. Scenario Two assumes that our trading partners refuse to lower their tariff rates to match those of the U.S. Instead, in order to uphold the principle of reciprocity, the U.S. raises its tariffs to mirror levels. To

TABLE 3

Trade Deficit Reductions Under Alternative USRTA Scenarios

	REDUCTION IN U.S. TRADE DEFICIT WITH WORLD	
Metric	**Scenario One: Partner Countries Match U.S. Tariff Rate**	**Scenario Two: U.S. Matches Partner Tariff Rates**
In Billions of Dollars	$58.3	$63.6
As Percentage of 2018 Deficit	9.4%	10.2%

NOTE: USRTA—U.S. Reciprocal Trade Act.
SOURCE: White House Office of Trade and Manufacturing Policy, *The United States Reciprocal Trade Act: Estimated Job & Trade Deficit Effects*, May 2029, p. 18, https://www.wsj.com/public/resources/documents/RTAReport.pdf?mod=article_inline (accessed March 21, 2023).

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calculate the trade deficit reductions under Scenario One and Scenario Two, the analysis relied on the World Bank's SMART tariff simulator. Table 3 provides the simulation results.

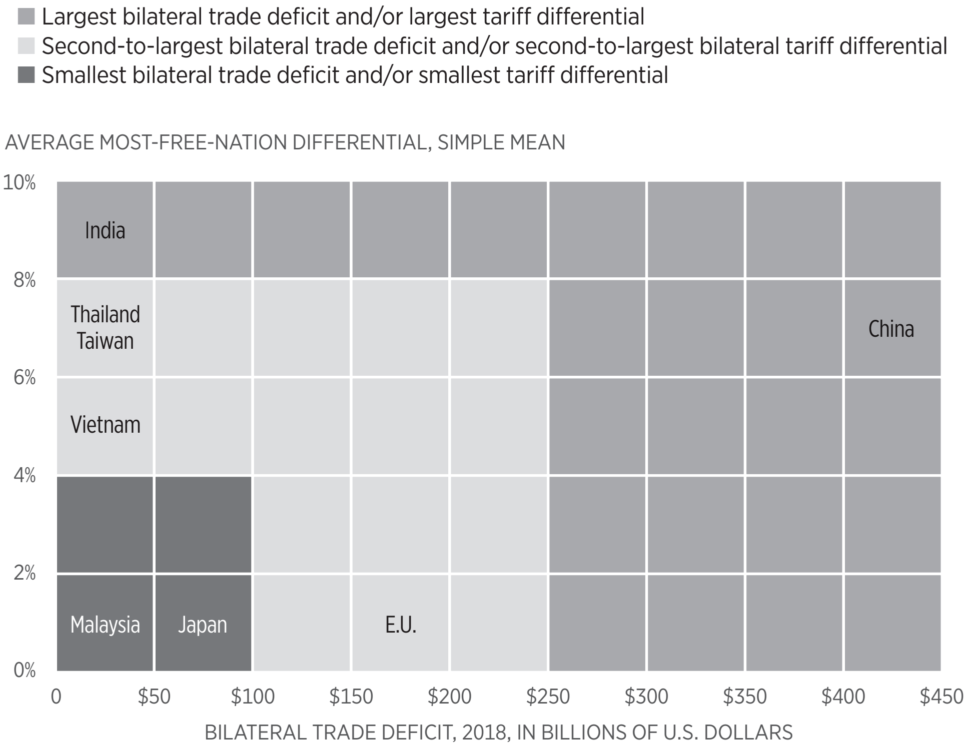
In Scenario One, if all 132 countries were to lower their higher nonreciprocal tariffs to U.S. levels, the overall U.S. trade deficit in goods would be reduced by $58.3 billion, or about 9.4 percent of that deficit. In contrast, in Scenario Two, if these countries were to refuse to reciprocate and the U.S. were to raise its tariffs to mirror those countries' levels, the reduction in the U.S. trade deficit would be slightly larger: an estimated $63.6 billion, or 10.2 percent of the deficit. This suggests that implementing the USRTA would help to create between 350,000 and 380,000 jobs.

The slightly larger reduction in the trade deficit in Scenario Two as a result of the U.S. raising its tariffs to mirror those of its partners, as opposed to foreign countries lowering their tariffs to U.S. levels, may seem surprising to those who are steeped in Ricardian dogma and the textbook lessons of free trade. However, this result speaks to the fact that so many of America's trading partners are applying significantly higher tariffs to thousands of American products.

Estimated Impacts on Key U.S. Bilateral Trade Deficits. If the USRTA were enacted, a President would likely have to prioritize which countries he should negotiate with first. One way to create such a priority list would be to choose those countries that have relatively large trade deficits with the U.S. and apply relatively high tariffs. This is illustrated in Figure 1, which maps bilateral trade deficits

FIGURE 1

Mapping Bilateral Trade Deficits Against Tariff Differentials



SOURCE: White House Office of Trade and Manufacturing Policy, *The United States Reciprocal Trade Act: Estimated Job & Trade Deficit Effects*, May 2019, p. 20, https://www.wsj.com/public/resources/documents/RTAReport.pdf?mod=article_inline (accessed March 21, 2023).

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against tariff differentials for eight major U.S. trading partners, which account for 47.6 percent of total U.S. trade and 88.6 percent of the U.S. trade deficit in goods.

Figure 1 shows that the USRTA priority list would include the countries in red—Communist China and India—along with trading partners in the yellow zone. This yellow zone includes the European Union, which features a very high deficit, along with Thailand, Taiwan, and Vietnam, which feature particularly high tariff differentials.

Table 4 estimates the improvement in the U.S. trade deficit under Scenario One, in which partner countries match the U.S. tariff rate under pressure from

TABLE 4

Trade Deficit Reductions for Target Countries

	SCENARIO ONE: PARTNER COUNTRIES MATCH U.S. TARIFF RATE		SCENARIO TWO: U.S. MATCHES PARTNER TARIFF RATES	
Country	**Projected Change in Bilateral Trade Balance ($ Billions)**	**Bilateral Deficit Reduction as Share of 2018 Bilateral Deficit**	**Projected Change in Bilateral Trade Balance ($ Billions)**	**Bilateral Deficit Reduction as Share of 2018 Bilateral Deficit**
India	5.0	24%	18.7	88%
Taiwan	1.0	6%	9.2	59%
Vietnam	0.7	2%	17.2	44%
Thailand	3.2	17%	6.4	34%
Communist China	18.5	4%	70.6	17%
European Union	8.0	5%	25.3	15%
Total	**35.4**	**4%**	**45.6**	**5%**

SOURCE: White House Office of Trade and Manufacturing Policy, *The United States Reciprocal Trade Act: Estimated Job & Trade Deficit Effects*, May 2029, p. 21, https://www.wsj.com/public/resources/documents/RTAReport.pdf?mod=article_inline (accessed March 21, 2023).

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the American President, and then under Scenario Two, in which the U.S. matches the tariffs of partners that refuse to lower their tariffs. Columns 2 and 4 in Table 4, when the USRTA is applied first to Communist China and then to the EU, show the largest absolute dollar reductions in bilateral trade deficits. This results in bilateral deficit reductions in Scenario One of $18.5 billion for China and $8.0 billion for the EU. In Scenario Two, the impacts for Communist China and the EU are substantially larger: $70.6 billion and $25.3 billion, respectively.

Note further that the largest relative dollar reductions in percent terms come from applying the USRTA first to India and then to Taiwan and Vietnam. For example, if India were to reduce its tariffs to U.S. levels, as in Scenario One, this would reduce the bilateral trade deficit with India by 24 percent. If the U.S. raised its tariffs to mirror India's levels, the result would be a far more dramatic 88 percent

TABLE 5

Communist China’s Categories of Economic Aggression (Page 1 of 8)

China’s Acts, Policies, and Practices of Economic Aggression	Protect China’s Home Market from Competition and Imports	Expand China’s Share of Global Markets	Secure and Control Core Natural Resources Globally	Dominate Traditional Manufacturing Industries	Acquire Key Technologies and IP from Other Countries and the U.S.	Capture Emerging High-Tech Industries that Drive Future Growth and Advancements in Defense Industry
Adverse Administrative Approvals and Licensing Processes	✓				✓	✓
Anti-monopoly Law Extortion	✓	✓			✓	✓
Bid-Rig Foreign Government Procurement Contracts		✓		✓		✓
“Brand Forcing” — Forced Use of Chinese Brands	✓					
Burdensome and Intrusive Testing	✓				✓	✓
Chinese Communist Party Co-opts Corporate Governance	✓				✓	✓
Chinese Nationals as Non-Traditional Information Collectors		✓		✓	✓	✓

TABLE 5

Communist China’s Categories of Economic Aggression (Page 2 of 8)

China’s Acts, Policies, and Practices of Economic Aggression	Protect China’s Home Market from Competition and Imports	Expand China’s Share of Global Markets	Secure and Control Core Natural Resources Globally	Dominate Traditional Manufacturing Industries	Acquire Key Technologies and IP from Other Countries and the U.S.	Capture Emerging High-Tech Industries that Drive Future Growth and Advancements in Defense Industry
Claim Sovereign Immunity on U.S. Soil to Prevent Litigation		✔				
Consolidate State-Owned Enterprises into National Champions	✔	✔	✔	✔	✔	✔
Counterfeiting and Piracy Steals Intellectual Property		✔			✔	✔
Currency Manipulation and Undervaluation	✔	✔		✔		
Cyber-Enabled Espionage and Theft		✔		✔	✔	✔
Data Localization Mandates	✔				✔	✔
“Debt-Trap” Financing to Developing Countries			✔	✔		

TABLE 5

Communist China's Categories of Economic Aggression (Page 3 of 8)

China's Acts, Policies, and Practices of Economic Aggression	Protect China's Home Market from Competition and Imports	Expand China's Share of Global Markets	Secure and Control Core Natural Resources Globally	Dominate Traditional Manufacturing Industries	Acquire Key Technologies and IP from Other Countries and the U.S.	Capture Emerging High-Tech Industries that Drive Future Growth and Advancements in Defense Industry
Delays in Regulatory Approvals		✓		✓		✓
Discriminatory Catalogues and Lists	✓				✓	✓
Discriminatory Patent and Other IP Rights Restrictions	✓	✓			✓	✓
Dumping Below Cost Into Foreign Markets		✓		✓		✓
Evasion of U.S. Export Control Laws					✓	✓
Expert Review Panels Force Disclosure of Proprietary Information		✓			✓	✓
Export Restraints Restrict Access to Raw Materials	✓	✓	✓	✓		✓

TABLE 5

Communist China’s Categories of Economic Aggression (Page 4 of 8)

China’s Acts, Policies, and Practices of Economic Aggression	Protect China’s Home Market from Competition and Imports	Expand China’s Share of Global Markets	Secure and Control Core Natural Resources Globally	Dominate Traditional Manufacturing Industries	Acquire Key Technologies and IP from Other Countries and the U.S.	Capture Emerging High-Tech Industries that Drive Future Growth and Advancements in Defense Industry
Financial Support to Boost Exports and Promote Import Substitution	✓	✓		✓		✓
Forced Research and Development (“R&D Localization”)					✓	✓
Foreign Ownership Restrictions Force Technology and IP Transfer		✓			✓	✓
Government Procurement Restrictions	✓					
Indigenous Technology Standards	✓				✓	✓
“Junk Patent” Lawsuits					✓	
Lack of Transparency	✓					

TABLE 5

Communist China's Categories of Economic Aggression (Page 5 of 8)

China's Acts, Policies, and Practices of Economic Aggression	Protect China's Home Market from Competition and Imports	Expand China's Share of Global Markets	Secure and Control Core Natural Resources Globally	Dominate Traditional Manufacturing Industries	Acquire Key Technologies and IP from Other Countries and the U.S.	Capture Emerging High-Tech Industries that Drive Future Growth and Advancements in Defense Industry
Lax and Inconsistent Labor Laws	✔	✔		✔		
Monopsony Purchasing Power					✔	✔
Move the Regulatory Goalposts	✔				✔	✔
Open Source Collection of Science and Technology Information					✔	✔
Overcapacity Drives Out Foreign Rivals		✔		✔		✔
Physical Theft of Technologies and IP Through Economic Espionage		✔		✔	✔	✔
Placement of Chinese Employees with Foreign Joint Ventures	✔					
Price Controls to Restrict Imports	✔					

TABLE 5

Communist China's Categories of Economic Aggression (Page 6 of 8)

China's Acts, Policies, and Practices of Economic Aggression	Protect China's Home Market from Competition and Imports	Expand China's Share of Global Markets	Secure and Control Core Natural Resources Globally	Dominate Traditional Manufacturing Industries	Acquire Key Technologies and IP from Other Countries and the U.S.	Capture Emerging High-Tech Industries that Drive Future Growth and Advancements in Defense Industry
"Product Hop" and "Country Hop" to Evade Antidumping and Countervailing Duties		✓		✓		
Promise Cooperation on Regional Security Issues as Bargaining Chip	✓	✓		✓		
Quotas and Tariff-Rate Quotas	✓					
Recruitment of Science, Technology, Business, and Finance Talent		✓		✓		✓
Retaliation and Retaliatory Threats		✓		✓	✓	✓
Reverse Engineering					✓	✓

TABLE 5

Communist China's Categories of Economic Aggression (Page 7 of 8)

China's Acts, Policies, and Practices of Economic Aggression	Protect China's Home Market from Competition and Imports	Expand China's Share of Global Markets	Secure and Control Core Natural Resources Globally	Dominate Traditional Manufacturing Industries	Acquire Key Technologies and IP from Other Countries and the U.S.	Capture Emerging High-Tech Industries that Drive Future Growth and Advancements in Defense Industry
Sanitary and Phytosanitary Standards Raise Non-Tariff Barriers	✓				✓	✓
Secure and Controllable Technology Standards	✓				✓	✓
Security Reviews Force Technology and IP Transfer	✓				✓	
Structuring Transactions to Avoid CFIUS Review of Chinese Investment in the U.S.					✓	✓
Subsidized Factor Inputs — Capital, Energy, Utilities, and Land					✓	✓
Tariffs	✓					

TABLE 5

Communist China's Categories of Economic Aggression (Page 8 of 8)

China's Acts, Policies, and Practices of Economic Aggression	Protect China's Home Market from Competition and Imports	Expand China's Share of Global Markets	Secure and Control Core Natural Resources Globally	Dominate Traditional Manufacturing Industries	Acquire Key Technologies and IP from Other Countries and the U.S.	Capture Emerging High-Tech Industries that Drive Future Growth and Advancements in Defense Industry
Technology-Seeking, State-Directed Foreign Direct Investment		✔			✔	✔
Traditional Spycraft				✔	✔	✔
Transship to Evade Antidumping and Countervailing Duties		✔				
Value-Added Tax Adjustments and Rebates Subsidize Chinese Exports		✔		✔		
Weak and Laxly Enforced Environmental Laws		✔		✔		

SOURCE: White House Office of Trade and Manufacturing Policy, *How China's Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World*, June 2018, https://trumpwhitehouse.archives.gov/wp-content/uploads/2018/06/FINAL-China-Technology-Report-6.18.18-PDF.pdf (accessed March 21, 2023).

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reduction in the U.S. bilateral trade deficit with India. Similarly, if Taiwan were to reduce its tariffs to U.S. levels, the size of the U.S. bilateral trade deficit with Taiwan would fall by 6 percent. If the U.S. imposed a mirror tariff, its bilateral trade deficit with Taiwan would fall by 59 percent.

These results again underscore the high degree of unfair, unbalanced, and nonreciprocal trade that currently exists between the U.S. and much of the rest of the world, which penalizes American farmers, ranchers, manufacturers, and workers because of the WTO-MFN conundrum. These simulations also demonstrate that implementation of the USRTA most likely would substantially reduce the U.S. trade deficit while creating hundreds of thousands of new jobs. These benefits notwithstanding, however, the U.S. would still face a substantial overall trade deficit and substantial bilateral trade deficits with many of its major trading partners.

Why might this be so? Because under WTO rules, America still faces numerous nonreciprocal nontariff barriers around the world. For example, one of America's largest trading partners, Japan, runs a significant bilateral trade surplus in goods with the U.S.—more than $70 billion a year. While Japan has relatively low tariffs, it ranks high on the nontariff barrier scale. In such cases, which are numerous, passage of the USRTA would likely also be very helpful in reducing nontariff barriers.

This is because under the powers provided by the USRTA, if a foreign country imposes significantly higher nontariff barriers, then the President has the authority to "negotiate and seek to enter into an agreement" that "commits the country to… eliminate [its] nontariff barriers."[16] If the country refuses to come to the negotiating table and lower its nontariff barriers, the President has the authority to levy reciprocal duties to offset or mirror those barriers.

In summary, passage of the USRTA would go a long way toward leveling the playing field for American farmers, ranchers, manufacturers, and workers who are now forced to compete in an intrinsically unfair, unbalanced, and nonreciprocal WTO-MFN system.

Nor is the USRTA necessarily the only possible legislative way to address this issue. In 2017, then-House Speaker Paul Ryan (R–WI) and then-House Ways and Means Committee Chairman Kevin Brady (R–TX) proposed a "border adjustment tax." The proposed border adjustment would have eliminated the ability of corporations to deduct the cost of imports while eliminating the tax on income attributable to exports. This border adjustment tax would have shifted the U.S. corporate income tax from an origin-based tax applying to the production of goods and services in the United States to a destination-based tax applying to the consumption of goods and services in the U.S.

This tax—strongly opposed by American multinational corporations and big-box retailers—not only would have leveled the playing field with respect to WTO rules, but also would have provided an innovative alternative to the application of

tariffs.[17] A conservative Administration might do well to look at such a tax as part of its trade agenda.

CHALLENGE #2: COMMUNIST CHINA'S ECONOMIC AGGRESSION AND QUEST FOR WORLD DOMINATION[18]

Among all of its bilateral trade relationships, America's relationship with Communist China is the most fraught with difficulty. The problem is not just that the relentlessly mercantilist and protectionist trade policies that China has pursued ever since its accession to the WTO in 2001 have led to chronic, massive, and ever-expanding trade deficits. Communist China's economic aggression in the traditional trade policy space is further facilitated by equally aggressive industrial policies and technology transfer–forcing policies that are designed to shift the world's manufacturing and supply chains to Communist Chinese soil.

The Chinese Communist Party's policy goal is to propel the Chinese economy, but its broader goal is to strengthen Communist China's defense industrial base and associated warfighting capabilities. That China unabashedly seeks to supplant America as the world's dominant economic and military power is not in dispute. Rather, it is a prominent feature of Communist Chinese dictator Xi Jinping's rhetoric. Xi has promised that the deed will be done by 2049, the 100-year anniversary of the Communist takeover of the Mainland.[19]

In light of Communist China's broader geopolitical and military agenda, the American President who takes office in January 2025 must view the U.S.–China trade relationship and associated policy reforms within the context of the broader existential threat posed by Communist China. The question is whether that next President should seek to decouple economically and financially from Communist China as America's first best response to China's unrelenting aggression or continue efforts to negotiate with an authoritarian country and brutal dictatorship with a well-established reputation for failing to abide by any agreements it enters.

Institutionalized Aggression. Table 5 depicts more than 50 types of policy aggression institutionalized by the CCP across six different categories of such aggression. Viewed as whole, the extent of Communist China's aggression is breathtaking.

At the trade policy level, Communist China relies heavily on a wide range of mercantilist and protectionist tools to protect its own markets and unfairly exploit foreign markets. These instruments of Communist Chinese trade aggression include high tariffs and nontariff barriers, currency manipulation, a heavy reliance on sweatshop labor and pollution havens, the dumping of unfairly subsidized exports, and widespread counterfeiting and piracy: Communist China is the world's largest source of counterfeit and pirated products.

In addition, Communist Chinese enterprises benefit from preferential policies that have burdened world markets with subsidized overcapacity. The resultant glut

of Communist Chinese exports in turn depresses world prices and pushes foreign rivals out of the global market—steel is a major example.[20] Industrial policy tools that further reinforce Communist China's mercantilist and protectionist trade policies include numerous direct and indirect subsidies to boost exports and the consolidation of heavily subsidized state-owned enterprises into "national champions" that can compete with foreign companies in both domestic and global markets.

Communist China also uses a predatory "debt trap" model of economic development aid that proffers substantial financing to developing countries in exchange for their willingness to mortgage their natural resources and allow Communist China access to their markets. The practical effect of this debt trap model is to give Communist China a competitive edge internationally that stems from its preferential access to relatively lower-cost commodities needed in the manufacturing process. These commodities range from bauxite, copper, and nickel to rarer commodities such as beryllium, titanium, and rare earth minerals.

As a complement to this debt trap gambit and to exploit its commanding share of a wide range of critical raw materials that are essential to the global supply chain and production of high-technology and high-value-added products, Communist China strategically uses protectionist export restraints, including export quotas and export duties. These export restraints thereby restrict access to raw materials such as rare earth, tungsten, and molybdenum that are essential in the high-technology production space. The result is to drive up world prices and thereby put pressure on American and other foreign downstream producers to move their operations, technologies, and jobs to Communist China. American industries that have been affected by Communist China's export restraints range from steel, chemicals, and electric cars to wind turbines, lasers, semiconductors, and refrigerants.

Technology-Forcing Policies. Table 6, extracted from the White House Office of Trade and Manufacturing Policy's report on Communist China's economic aggression,[21] provides a summary of the various policies the Chinese Communist Party uses to force the transfer of the West's technologies to Communist Chinese soil. Formally, Communist Chinese industrial policy seeks to promote the "digestion, absorption, and re-innovation" of technologies and intellectual property (IP) from around the world.[22]

As noted in Table 6, this policy is carried out, for example, through state-sponsored IP theft—coercive and intrusive regulatory gambits to force technology transfer, typically in exchange for limited access to the Chinese market. Communist China's looting of American technology is further enhanced by "information harvesting" conducted by Communist Chinese nationals who infiltrate U.S. universities, national laboratories, and other centers of innovation. Strategic sectors targeted by Communist Chinese economic espionage have included electronics, telecommunications, robotics, data services, pharmaceuticals, mobile phone

services, satellite communications and imagery, and business application software. It has been estimated that the theft of trade secrets alone costs the U.S. "between $180 billion and $540 billion" annually.[23]

Closely related to Communist China's espionage campaigns are its state-backed efforts to evade U.S. export control laws. These laws are designed to prevent the export of sensitive technologies with military applications.[24] However, a significant problem facing agencies like the Departments of Commerce, Defense, and State is the growth of "dual-use" technologies, which have both military and civilian utility. For example, airplane engine technologies have an obvious commercial application. When acquired by a strategic economic and military competitor like Communist China, however, such commercial items can quickly wind up propelling the aircraft of the People's Liberation Army.

As an example of Communist China's coercive and intrusive regulatory gambits to force the transfer of foreign technologies and IP to Chinese competitors, foreign companies often must enter into joint ventures or partnerships with minority stakes in exchange for access to the Chinese market. Once a U.S. or foreign company is coerced into entering a joint venture with a Chinese partner, the door is open to the transfer of technology and IP. Similarly, a relentlessly coercive Communist China has forced American patent and technology holders to accept below-market royalty rates in licensing and other forms of below-market compensation for their technologies—and the American government has done little or nothing about it.

Information Harvesting. Every year, more than 300,000 Communist Chinese nationals attend U.S. universities or are hired at U.S. national laboratories, innovation centers, incubators, and think tanks. To put this in perspective, according to the Chinese Ministry of Education, only 20,000 American nationals were studying abroad at Chinese universities on the mainland in 2018.[25] These Chinese nationals—often members (or the sons and daughters of members) of the Chinese Communist Party—now account for approximately one-third of foreign university and college students in the United States and about 25 percent of graduate students specializing in science, technology, engineering, or math (STEM).[26] As a Defense Innovation Unit Experimental (DIUx) report has warned:

> Academia is an opportune environment for learning about science and technology since the cultural values of U.S. educational institutions reflect an open and free exchange of ideas. As a result, Chinese science and engineering students frequently master technologies that later become critical to key military systems, amounting over time to unintentional violations of U.S. export control laws.[27]

State-backed Chinese enterprises also increasingly finance joint research programs and the construction of new research facilities on U.S. campuses. For

example, Huawei, well-known within the American intelligence community as an instrument of Chinese military espionage, has partnered with the University of California–Berkeley on research that focuses on artificial intelligence and related areas such as deep learning, reinforcement learning, machine learning, natural language processing, and computer vision, all of which have important future military applications.[28] In this way, UC–Berkeley, whether unwittingly or wittingly, helps to boost Communist China's capabilities and quest for military dominance.

Communist Chinese state actors are also strategically building research centers in innovation centers and hubs like Silicon Valley and Boston. Such American research has accelerated Communist China's development of hypersonic glide vehicles, which travel at speeds in excess of Mach 5 and are aimed at evading modern ballistic missile defense systems while they deliver their nuclear weapons.

Technology-Seeking, State-Financed Foreign Direct Investment (FDI). If American entrepreneurs build it, Communist Chinese investors will come. And come they have in droves. In the words of the United States Trade Representative:

> The Chinese government directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies, to obtain cutting-edge technologies and intellectual property and generate large-scale technology transfer in industries deemed important by state industrial plans.[29]

Communist Chinese buyers have included most prominently state-owned enterprises, private Chinese companies with interlocking ties to the Communist Chinese state, and state-backed sovereign wealth funds. These agents of the Communist Chinese government push their foreign direct investment through vehicles that include mergers and acquisitions, seed and venture capital financing, and greenfield investing, particularly in strategically targeted high-technology industries. Since 2012, CB Insights has catalogued more than 600 high-technology investments in the United States worth close to $20 billion—with artificial intelligence, augmented and virtual reality, and robotics receiving a particular focus—by Communist China–based investors.[30]

All of these behaviors raise the question of whether Communist Chinese nationals should be granted visas to penetrate our universities, think tanks, and research institutions and whether Communist Chinese capital should be allowed to invest in America's cutting-edge technology firms.

Policy Responses to Communist Chinese Aggression. It should be clear from this review that Communist China's economic aggression is both widespread and systemic. The CCP's self-proclaimed goal is to supplant the U.S. as the world's dominant economic and military superpower. The question: How should the next American President address this aggression? Policy responses range from further

attempts to negotiate with the CCP to strategically decoupling economically and financially from Communist China.

The Fruitlessness of Further Negotiations. If the past is prologue, and as we learned during the Trump Administration, any further negotiations with Communist China are likely to be both fruitless and dangerous: fruitless because the CCP now has a very well-established reputation for bargaining in bad faith and dangerous because as long as the CCP's aggression continues, it will further weaken America's manufacturing and defense industrial base and global supply chains.

The record regarding Communist China's bad-faith negotiating is clear. In September 2015, President Barack Obama stood with Xi Jinping in the White House Rose Garden where Xi solemnly promised not to militarize the South China Sea and agreed that Communist China would not conduct knowingly cyber-enabled theft of intellectual property.[31] Within a year, the first promise would be broken.[32] As for Communist China's cyberattacks on American businesses, they have never stopped.

Upon taking office in 2017, President Trump put on hold his 2016 campaign promise to put high tariffs on Chinese products immediately. Instead, as a gesture of good faith, he sought to negotiate a comprehensive trade agreement with China that would have addressed many of the issues raised in this discussion.

By the middle of 2018, it was clear that the CCP had no intention of bargaining in good faith. As a result, on June 15, President Trump began to impose a series of tariffs[33] on Chinese products that would eventually rise to cover more than $500 billion of Chinese imports. These tariffs would lead Communist China's lead negotiator, Vice Premier Liu He, to agree tentatively in April of 2019 to what would have been the most comprehensive trade deal in global history.[34] On May 3, 2019, however, Liu would renege on that 150-page deal and seek its drastic re-trading.[35]

Finally, on January 15, 2020, the U.S. and Communist China signed a "Phase One" deal that was a pale shadow of the original deal.[36] This so-called Skinny Deal (as it was derisively and rightly called) combined proposed modest Communist Chinese reforms on issues related to forced technology transfer and intellectual property theft with promises of large-scale purchases of agricultural, manufacturing, and energy products. To date, this deal has been a predictable bust: Communist China has failed to consummate a significant fraction of its promised purchases and has made little or no progress on reforming its mercantilist, protectionist, and technology transfer–forcing policies.

The clear lesson learned in both the Obama and Trump Administrations is that Communist China will *never* bargain in good faith with the U.S. to stop its aggression. An equally clear lesson learned by President Trump, which he was ready to implement in a second term, was that the better policy option was to decouple both economically and financially from Communist China as further negotiations would indeed be both fruitless and dangerous.

TABLE 6

Vectors of Communist China's Economic Aggression in the Technology and IP Space

1. Physical Theft and Cyber-Enabled Theft of Technologies and IP
- Physical Theft of Technologies and IP Through Economic Espionage
- Cyber-Enabled Espionage and Theft
- Evasion of U.S. Export Control Laws
- Counterfeiting and Piracy
- Reverse Engineering

2. Coercive and Intrusive Regulatory Gambits
- Foreign Ownership Restrictions
- Adverse Administrative Approvals and Licensing Requirements
- Discriminatory Patent and Other IP Rights Restrictions
- Security Reviews Force Technology and IP Transfers
- Secure and Controllable Technology Standards
- Data Localization Mandates
- Burdensome and Intrusive Testing
- Discriminatory Catalogues and Lists
- Government Procurement Restrictions
- Indigenous Technology Standards that Deviate from International Norms
- Forced Research and Development
- Antimonopoly Law Extortion
- Expert Review Panels Force Disclosure of Proprietary Information
- Chinese Communist Party Co-opts Corporate Governance
- Placement of Chinese Employees with Foreign Joint Ventures

3. Economic Coercion
- Export Restraints Restrict Access to Raw Materials
- Monopsony Purchasing Power

4. Information Harvesting
- Open-Source Collection of Science and Technology Information
- Chinese Nationals in U.S. as Non-Traditional Information Collectors
- Recruitment of Science, Technology, Business, and Finance Talent

5. State-Sponsored, Technology-Seeking Investment
- Chinese State Actors Involved in Technology-Seeking FDI
- Chinese Investment Vehicles Used to Acquire and Transfer U.S. Technologies and IP
  - Mergers and Acquisitions
  - Greenfield Investments
  - Seed and Venture Funding

SOURCE: White House Office of Trade and Manufacturing Policy, *How China's Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World*, June 2018, https://trumpwhitehouse.archives.gov/wp-content/uploads/2018/06/FINAL-China-Technology-Report-6.18.18-PDF.pdf (accessed March 21, 2023).

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The following policy options were on the drawing board or in discussion as preparations for a potential Trump second term were being made. These options span the spectrum from purely trade-related like increasing tariffs to cutting off Communist China's access to American financial markets, research institutions, and consumers. The next American President should strongly consider adopting all of them as a package:

- Strategically expand tariffs to all Chinese products and increase tariff rates to levels that will block out "Made in China" products, and execute this strategy in a manner and at a pace that will not expose the U.S. to lack of access to essential products like key pharmaceuticals.
- Provide significant financial and tax incentives to American companies that are seeking to onshore production from Communist China to U.S. soil.
- Stop Communist China's abuse of the so-called de minimis exemption, which allows it to evade the tariffs for products valued at less than $800.
- Prohibit Communist Chinese state-owned enterprises from bidding on U.S. government procurement contracts (for example, contracts for subway and other transportation systems).
- Prohibit the use of Communist Chinese–made drones in American airspace.
- Ban all Chinese social media apps such as TikTok and WeChat, which pose significant national security risks and expose American consumers to data and identity theft.
- Prohibit all Communist Chinese investment in high-technology industries.
- Prohibit U.S. pension funds from investing in Communist Chinese stocks.
- Delist any Communist Chinese stocks that do not meet Public Company Accounting Oversight Board standards or, alternatively, close off the Chinese "A shares" stock market to U.S. investment and deregister U.S.-sanctioned Communist Chinese companies.
- Prohibit the use of Hong Kong clearinghouses as transit points for American capital investing in the Chinese mainland.
- Prohibit the inclusion of Chinese sovereign bonds in U.S. investors' portfolios.

- Systematically reduce and eventually eliminate any U.S. dependence on Communist Chinese supply chains that may be used to threaten national security such as medicines, silicon chips, rare earth minerals, computer motherboards, flatscreen displays, and military components.
- Sanction any companies, including American companies like Apple, that facilitate Communist China's use of its Great Firewall surveillance and censorship capabilities.
- Order the Department of Homeland Security (DHS) and Department of Justice to contract with U.S.-owned and U.S.-operated artificial intelligence companies that are capable of detecting, identifying, and disrupting both the domestic groups' and CCP influencers' social media operations and funding streams using public information as a rapidly available offensive measure.
- Reinvigorate and expand the DHS crackdown on the CCP's use of e-sellers (including third-party sellers) and the shippers and operators of major warehouses such as Amazon, eBay, and Alibaba to flood U.S. markets with counterfeit and pirated goods.
- Compel the closure of all Confucius Institutes in the U.S., which serve as propaganda arms of the CCP.
- Significantly reduce or eliminate the issuance of visas to Chinese students or researchers to prevent espionage and information harvesting.
- Hold the CCP accountable for the COVID-19 virus, which almost certainly originated as a genetically engineered virus from the Wuhan Institute of Virology, and do so through the establishment of a presidential commission or select congressional committee that would investigate the origins of the virus; its various costs, both economically and in human life; and the possible means of collecting damages from the CCP, which are likely to rise to the trillions of dollars.

If the new U.S. President wishes to defend this country against the serious existential threat posed by Communist China, that President will adopt all of these proposals through the requisite presidential executive orders or memoranda.

Effective Trade Policy in the Real World. To conclude this analysis, it is useful to offer brief reflections on a number of key obstacles to implementing the policy initiatives recommended in this chapter. These obstacles include:

- The dogma of the Ricardian free-trade model, which has been used as propaganda to thwart the adoption of measures that seek to level the global trading field for American manufacturers, farmers, ranchers, and workers;
- The politics of trade policy, which has led to a great divide that makes trade policy reforms difficult to implement;
- The economics of trade deficits, which are not adequately understood either by the American public or by the policymaking intelligentsia; and
- The crucial role of supportive White House and Administration personnel in implementing effective trade policies.

The Dogma of Free Trade. Clearly, the fair and balanced trade orientation of this chapter runs starkly against the free trade grain of the globalist Ricardian orthodoxy, which is predicated on the theory that free trade represents the best path by which to achieve both American and global prosperity. This orthodoxy is based on the ivory tower academic conclusion that if countries trade freely among each other, each will pursue its own comparative advantages; production will be most efficient around the world; the economic pie will be bigger both for the globe and for each free trading country; and (so long as workers who lose their jobs are fairly compensated from the gains from trade) everyone will be better off.

The most obvious problem with this orthodoxy (there are many more) is that nowhere is Ricardian free trade mirrored in the real world. Instead, America trades in a world where the WTO's MFN rules are stacked against us, scofflaws like Communist China run roughshod over what meager WTO rules there are, and the United States among all of the world's developed nations is the biggest victim of the free trade Ricardian orthodoxy.

During his first term, President Donald Trump preached that there can be no free trade without fair, reciprocal, and balanced trade. He was right then, and whoever is the next President in 2025 should heed this critical principle whenever the flag of free trade is waved to prevent the adoption of needed reforms.

The Politics of Trade Policy: Who Benefits? Today, there is a great divide among Americans that stands in the way of constructive trade policy reforms. This great divide is certainly not about a partisan desire for low taxes and a reduced regulatory burden. Rather, it is over whether our borders should be open or secure and whether it is prudent to offshore our manufacturing and defense industrial base and associated supply chains.

Those who support secure borders and seek to onshore more of American production and supply chains do so to boost the real wages of American workers and to

enhance our national security. Some Americans historically have supported open borders and offshoring under the flag of the Ricardian trade model, which assumes the free flow of both labor and capital. Yet it is equally true that open borders and offshoring also help American multinational corporations to maximize their profits by minimizing their labor and environmental protection costs.

In particular, an open border policy, which allows for the unlimited migration of cheap labor, depresses American wage rates and thereby boosts corporate profits. At the same time, offshoring gives American corporations readier access to the sweatshops and pollution havens of Asia and Latin America. Our skies and water may be cleaner, and our products may be cheaper, Main Street manufacturers and workers bear the brunt of these policies.

The obvious political problem in adopting many of the policies proposed here is that they will be opposed by the special-interest groups that benefit from open borders and offshoring and that contribute lavishly to both political parties. These special-interest groups range from the hedge funds of Wall Street and tech entrepreneurs of Silicon Valley to big-box retailers that stuff their aisles particularly with cheap "Made in China" goods.

YES, TRADE DEFICITS MATTER

> *[O]ur country has been behaving like an extraordinarily rich family that possesses an immense farm. In order to consume 4% more than we produce—that's the trade deficit—we have, day by day, been both selling pieces of the farm and increasing the mortgage on what we still own.*
>
> Warren Buffett[37]

Historically, one line of attack against attempts to implement fair trade policies in the name of reducing America's massive and chronic trade deficit has been the claim that "trade deficits don't matter." The intellectual tip of this spear has often been think tanks that generate reams of analyses in support of a purely free trade (and open borders) American posture.[38] Yet both common sense and several very good reasons tell us that trade deficits matter a great deal.

Economic Security. The economic security argument that trade deficits matter begins with the observation that growth in any country's real, inflation-adjusted gross domestic product (GDP) depends on only four factors: consumption, government spending, business investment, and net exports (the difference between exports and imports). Reducing a trade deficit through implementation of the U.S. Reciprocal Trade Act, the application of tariffs, or renegotiating a bad trade deal like NAFTA all represent ways to increase net exports—and thereby boost the rate of economic growth.

Suppose, for example, that under the USRTA the American President persuaded India to reduce its very high protectionist tariffs and Japan to lower its formidable nontariff barriers. America would surely sell more Florida oranges, Washington apples, California wine, Wisconsin cheese, and Harley-Davidson motorcycles. The resultant fall in the trade deficit would increase America's GDP, and the real wages of blue-collar America would rise from Seattle and Orlando to Sonoma and Milwaukee. But that's not all.

Consider, too, the investment term in the GDP growth equation. When U.S. companies offshore their production to chase cheap labor or manufacture in a "pollution haven" country like Communist China or India with lax environmental regulations, the result is reduced nonresidential fixed investment—and a GDP growth rate that is lower than it would be otherwise. Moreover, if such offshored production results in more foreign exports to the U.S.—for example, an American consumer buys a Made in Mexico Dodge Journey or Chevrolet Trax rather than a vehicle assembled in Detroit—the trade deficit rises along with the fall in investment, further reducing GDP growth.

National Security. The national security argument that trade deficits matter begins with America's national-income accounting double-entry system and this accounting identity: Any deficit in the current account caused by imbalanced trade must be offset by a surplus in the capital account, meaning foreign investment in the U.S.

In the short term, this balance-of-payments equilibrium may indeed "not matter" as foreigners return our trade-deficit dollars to American shores by seemingly benignly investing in U.S. government bonds and stocks. Of course, this infusion of foreign capital lowers American mortgage rates and keeps the stock market bullishly capitalized, which appears to be all to the good. Over time, however, running large and persistent trade deficits leads to a massive transfer of American wealth offshore into foreign hands. This wealth transfer happens as foreigners use their export dollars to buy American real estate, companies, and financial assets like the aforementioned stocks and government bonds.

The American investor Warren Buffett has referred to such wealth transfers offshore as "conquest by purchase." To Buffett, the big danger is that foreigners will eventually own so many U.S. government bonds that Americans will wind up working longer hours just to survive and service that foreign debt.

There is an even bigger national security danger, however, that Mr. Buffett has missed: an alternative conquest-by-purchase scenario. Suppose, for example, that one of the biggest holders of U.S. dollars is a rapidly militarizing strategic rival like Communist China that is intent on world hegemony. By buying up America's companies, technologies, farmland, food producers, and key elements of the domestic supply chain, Communist China can thereby gain more and more control of the U.S. manufacturing and defense-industrial base.

In this scenario, might America thereby lose a broader war for America's freedom and prosperity, not by shots fired but by American cash registers ringing up "Made in China" products? Might America even lose a broader hot war because it sent its defense industrial base abroad on the wings of a persistent trade deficit? It follows that for both economic and national security reasons, trade deficits do indeed matter. It is therefore of critical importance that we bring America's global trade back into balance through free, fair, balanced, and reciprocal trade and that we do so through the kind of policy initiatives and reforms recommended in this chapter.

PERSONNEL IS TRADE POLICY

Having a clear set of trade and industrial policies to achieve one's economic and national security goals, while essential, is not enough. The lessons of the Nixon, Reagan, and Trump Administrations teach us that "personnel is policy" or, in this case, that "bad personnel will mean bad trade policy."[39] That is why it will be equally critical to the next President's trade policy agenda to have key personnel in place who not only have the skills to implement the policies, but also have the firm commitment to do so.

During the Trump Administration, President Trump's key policy advisers and Cabinet officials clashed on the issues of international trade and combating Communist China's economic aggression. As much as President Trump did on the trade front that was bold and innovative and as much as he achieved by challenging Communist China, too much of his trade policy was disrupted or derailed by key personnel who did not share the President's vision of fair, balanced, and reciprocal trade.

In thinking about the personnel positions that are most essential to effective implementation of trade policy, the most obvious position to get exactly right is that of the United States Trade Representative. The USTR is at least putatively the top official on trade policy, and it is critical that this position be filled wisely.

Historically, during Republican Administrations, the USTR has been a free trader who rarely challenged the protectionist and mercantilist policies of America's trading partners and typically would seek to expand global trade. The Trump Administration broke this globalist Republican tradition by appointing as USTR attorney Robert E. Lighthizer, who not only had a keen understanding of the various legal levers a President can use to advance trade policy, but also was committed to the President's fair, balanced, and reciprocal trade agenda. The next Administration should make every effort to find someone with that understanding and that commitment to fill this position.

Less obvious—but almost as important—is the need to fill the position of Under Secretary of Commerce for International Trade wisely. One of the most important functions of the International Trade Administration, which is an agency in the Department of Commerce, is to impose antidumping and countervailing duties

against trade cheaters who dump products below cost into American markets or unfairly subsidize their exports. In fact, much of the cheating that does take place in the global trading arena can be addressed through such antidumping (AD) and countervailing duty (CVD) cases.

Within the West Wing itself, it is equally critical that the National Security Adviser, the Chairman of the Council of Economic Advisers (CEA), and the Director of the National Economic Council (NEC) all be aligned on trade policy. During the Trump Administration, with the notable exception of the President's third National Security Adviser, Robert O'Brien, and third CEA Chairman, Tyler Goodspeed, this regrettably was not the case.

Finally, and perhaps surprisingly, the Secretary of Defense plays a key role in trade policy, at least when it comes to advancing Section 232 cases. Under Section 232 of the Trade Expansion Act of 1962,[40] the President has the authority, through tariffs or other means, to reduce imports from other countries "if the President determines that such reduction or elimination would threaten to impair the national security." As a practical matter, the Secretary of Commerce spearheads any Section 232 cases, but in order to proceed with a Section 232 case, Commerce must obtain signoff from the Secretary of Defense.

When President Trump wanted to implement steel and aluminum tariffs, he had a willing servant in Secretary of Commerce Wilbur Ross. However, Secretary of Defense James Mattis resisted. Mattis simply did not understand a key tenet of the Trump Administration: Economic security is also national security. Without vibrant steel and aluminum industries, it will be difficult for America to provide the Pentagon with the kind of weapons it needs to defend the homeland.

CONCLUSION

A Harvard professor once told me during my doctoral thesis days that "if I tell you how it is, I've told you why it can't change." Despite the obvious exploitation of American farmers, ranchers, manufacturers, and workers by the international trading system and Communist Chinese aggression, powerful political forces nonetheless exist that profit from the status quo.

The stark lesson of this chapter is that America gets fleeced every day in the global marketplace both by a predatory Communist China and by an institutionally unfair and nonreciprocal WTO. Addressing these two challenges would go a long way toward restoring American greatness, both economically and militarily. Ignoring these two challenges will simply continue the parasitic draining of the American manufacturing and defense industrial base.

AUTHOR'S NOTE: The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual. However, the author would particularly like to thank Joanna Miller for her dedicated work and significant contribution to the chapter.

THE CASE FOR FREE TRADE

Kent Lassman

Trade policy is about more than goods and services: It is a statement of American identity. Our trade policy choices reveal America's values and where we put our trust. Do we place our trust in Washington elites to revive a declining country, or do we trust in America's tradition of entrepreneurs and everyday people blazing new trails? Do we follow China by copying its strong-arm trade policies, or do we lead China and the rest of the world by forging our own path? Our trade policy decisions will tell you what we Americans really think of ourselves.

A CONSERVATIVE VISION FOR TRADE

The policy recommendations in this chapter reflect a belief in the strength of America's founding institutions, its economy, and its people. They are based on data showing decades of American progress with all that this implies. They also reflect a realistic understanding of the fact that trade policy has limited capabilities and is vulnerable to mission creep and regulatory capture. Policymakers should be modest about what they can accomplish through trade policy and need to exercise constant vigilance against abuses. For example:

- Trade can lower consumer prices for ordinary Americans and open new markets for American businesses and their goods.

- Trade can help American workers and businesses to specialize in what they do best—which is how they outcompete the rest of the world in technology, manufacturing, agriculture, and other areas.

- In foreign policy, trade can help to preserve and strengthen alliances.

At the same time, sound trade policy requires humility. It is not a panacea for every policy problem. Trade policy cannot favor one sector over another without causing tradeoffs that outweigh the benefits.[41] Neither free trade nor protectionism will create jobs. Trade affects the types of jobs people have, but it has no long-run effect on the number of jobs. Labor force size is tied to population size more than anything else. The American people are smart and sophisticated enough to hear these truths.

It is not just conservatives who overestimate the power of trade policy. Recent progressive attempts to use trade policy to advance whole-of-government initiatives on climate, equity, and other issues will fail for the same reason that a hammer cannot turn a screw: It is the wrong tool for the job. Conservatives should be similarly skeptical of recent attempts on the Right to use progressive trade policy to punish political opponents, remake manufacturing, or accomplish other objectives

for which it is not suited. The next Administration needs to end the mission creep that has all but taken over trade policy in recent years.

Trade policy works best when it sticks to trade and treats separate issues separately. Trade agreements since the North American Free Trade Agreement (NAFTA) have been increasingly burdened by trade-unrelated provisions involving labor, environmental, intellectual property, and other regulations. Where these were a side agreement to NAFTA in the 1990s, they were integrated into the main text of the United States–Mexico–Canada Agreement (USMCA) in 2019. The Indo-Pacific Economic Framework for Prosperity (IPEF) that the Biden Administration is currently pursuing consists entirely of trade-unrelated provisions: Negotiations are steering clear of trade altogether.

Trade-unrelated provisions are routinely hijacked by progressives and rent-seekers and dilute otherwise worthwhile trade agreements. They also create additional points of contention that make agreements unnecessarily difficult to pass. A conservative trade policy should limit trade-unrelated provisions in trade agreements.

This does not mean that conservatives should ignore international negotiations on labor, environment, intellectual property, and other non-trade issues. It means they are more likely to succeed by treating each of them separately rather than letting them die in committee with each providing an additional sticking point for delaying the others.

A conservative trade policy must also take seriously the reality that in a democracy, the other side holds power about half of the time, but progressives run most agencies almost all of the time. A cardinal rule in public policy is not to give yourself powers you wouldn't want your opponents to have. That means building institution-level safeguards against mission creep to limit abuses.

Foreign policy considerations are not as separate from trade as are labor or environmental standards. China deserves special consideration, as does the World Trade Organization (WTO) along with its possible successors or alternatives. While trade is not the star of American foreign policy, it does play a supporting role. It should be used to strengthen alliances to help counter China, Russia, and other threats while making economic and cultural inroads inside them. The next American President should use this aspect of trade to the nation's advantage.

Drawing from America's Roots. In 1776, nearly 90 percent of Americans were farmers. For 10 people to eat, nine had to farm. That meant fewer people could be factory workers, doctors, or teachers, or even live in cities, because they were needed on the farm. Accordingly, life expectancy was around 40 years, and literacy was 13 percent.[42]

Today, fewer than 1 percent of Americans work on farms, yet America is a net exporter of food. People have infinite wants, so as rising productivity pushed some people off of farms, there were countless other jobs they could do. In true American fashion, many of these jobs were in brand new industries.

This was possible because the same can-do cultural values that inspired the American founding were accurately reflected in its new government. The U.S. Constitution created what was then the world's largest free trade area, and it did so on purpose.[43] The combination of the American self-improvement ethos and the large, free internal market guaranteed by the Constitution yielded intensive growth on a scale never before seen.

Many displaced farm laborers got jobs making the very farm equipment that made intensive agricultural growth possible, from railroad networks to cotton gins. Each fed the other. Agriculture and industry are not separate; they are as interconnected as everything else in the economy. None of this could have happened had the government enacted policies to preserve full agricultural employment.

Understanding Value. Just as communication is impossible without agreed-upon definitions of words, coherent policymaking is impossible without coherent categories. Policies are not likely to succeed when they try to separate an interconnected economy into arbitrary categories. The factory worker who builds a tractor does as much to boost farm production as the farmers themselves, yet economic planners put them in different categories. This problem is baked into industrial policy, as progressive planners have learned again and again.

A conservative approach to economic policy should treat value as value, whether it is created on a farm, in a factory, or in an office. A dollar of value created in manufacturing is neither more nor less valuable than a dollar of value created in agriculture or services.

Pursuing Access to Growing Markets. American history holds lessons for today's conservative trade policy. Some modern analysts see a correlation between high tariffs and high growth and confuse it for causation,[44] but 19th century America teaches a different lesson.

While the Constitution banned internal tariffs in the U.S., international tariffs reached their highest levels in U.S. history during the 19th century, beginning with the 1828 Tariff of Abominations.[45] At their peak in 1830, the average tariff on dutiable goods was 62 percent.[46] Fortunately, however, the tariffs' distorting effects were outweighed by market growth elsewhere. The 19th century saw Western expansion and a growing population (including millions of immigrants) working for the American dream. America's growing internal free trade zone allowed for still more specialization and more trade across state borders.

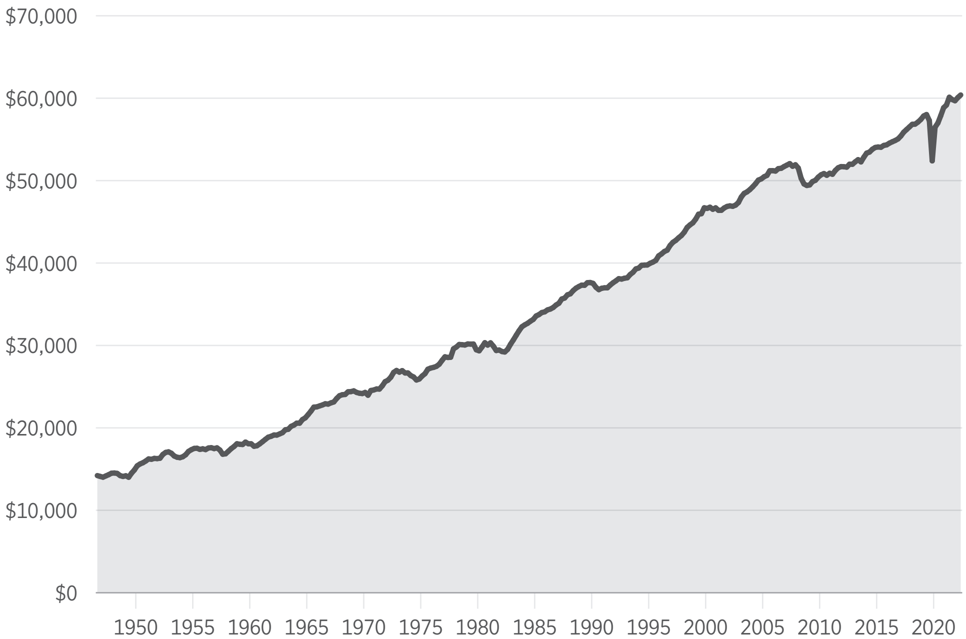
America's geographic expansion ended long ago, but population growth, the U.S.-led rules-based international trading system, and the steady 75-year decline in tariffs after World War II have made possible decades of continued prosperity. Intensive growth requires specialization, and the larger the market, the more specialization is possible.

Fighting Pessimistic Bias. Farmers' share of the population continued to decline through this entire period, yet employment remained high, and the

CHART 1

U.S. Real GDP per Capita

REAL GROSS DOMESTIC PRODUCT PER CAPITA, IN CHAINED 2012 DOLLARS, SEASONALLY ADJUSTED ANNUAL RATE



SOURCE: Federal Reserve Bank of St. Louis, "Real Gross Domestic Product per Capita," https://fred.stlouisfed.org/series/ A939RX0Q048SBEA (accessed March 2, 2023).

heritage.org

economy continued to grow. Factories were not the only beneficiaries of agriculture's productivity boom and the labor it freed; services also grew. In fact, service-sector employment surpassed manufacturing employment around 1890—far earlier than most people realize.[47]

Pessimistic bias is one of the most important cultural problems that conservative policymakers need to address. In trade, as in most other areas, few people ever zoom out to see the big picture, which is one reason why so many people mistakenly believe that U.S. manufacturing and the U.S. economy are in decline.

The data do not show American economic carnage. They show more than two centuries of intensive growth, made possible by a growing internal market throughout the 19th century and a growing international market in the post–World War II era. The transition from farm to factory did not shrink the labor force or farm output. Later, the transition from factories to services did not shrink the labor

force, factory output, or farm output. Both transitions affected the *types* of jobs, not the *number* of jobs.

Americans today can more easily afford everything from air conditioning to flat-screen televisions and smartphones, and trade is one reason why. Bigger markets mean more specialization, more innovative ideas, more customers, and more people from whom to buy.

America's official unemployment rate went as low as 3.5 percent during 2022, while real per capita gross domestic product (GDP) rose to an all-time record. Clearly, people who wanted to work were able to find work that paid well even as manufacturing jobs grew more slowly than service jobs.

IMPLEMENTING THE CONSERVATIVE VISION

Vision will be crucial for the next conservative Administration, but nuts-and-bolts policies are also important. Making the conservative vision for trade a reality will require several actions, some of which may prove to be more difficult to achieve than others. Specifically:

- **Implement** tariff relief to help counteract inflation by reducing prices for affected goods as well as to strengthen supply chains and boost manufacturing. End Section 232, 201, and 301 tariffs. Work with Congress to pass legislation repealing those provisions so future Presidents cannot abuse them.

- **Resist** calls for more spending on trade adjustment assistance, which is often hijacked for progressive ends. Technology and changing tastes displace six times as many workers as does trade, yet those workers get no such special treatment. Displaced workers should receive the same benefits regardless of the reason.

- **Remove** never-needed supply chain restrictions, which give families fewer places to which they can turn. The recent shortage of baby formula, for example, was caused largely by heavily protectionist regulations. Strength and resilience come from openness.

- **Enact** mutual recognition policies with allies. If a product is safe enough for European or Japanese consumers, then it is safe enough for Americans as well—and vice versa. This can reduce regulatory costs and open new markets.

- **Close** the Export–Import Bank, which serves mainly to subsidize foreign buyers' purchases of goods from a handful of well-connected American manufacturers.

- **Repeal** the Jones Act,[48] a century-old "Buy American" maritime law that has decimated the U.S. shipbuilding industry.

- **Work** with Congress to restore the President's Trade Promotion Authority, which would expedite the negotiation of trade agreements with the United Kingdom, Switzerland, Taiwan, the European Union, and other allies, and keep trade-unrelated provisions out of trade agreements.

- **Restore** the World Trade Organization's dispute resolution process to full strength.

- **Create** a successor to the WTO (assuming that it has been fatally wounded) that is open only to liberal democracies. This would prevent authoritarian countries like China from abusing the organization for their own ends.

- **Adopt** a multi-pronged China strategy to convince the Chinese government to reform its illiberal human rights and trade policies.

- **Rejoin** the Trans-Pacific Partnership (TPP), whose 11 members are developing institutional trade norms in an important geopolitical region without U.S. input or involvement.

- **Reorient** the proposed Indo-Pacific Economic Framework for Prosperity to focus only on trade issues, which it currently ignores in favor of progressive wish-list policies.

- **Strengthen** diplomatic pressure (in concert with allies) against Beijing's abuses. Encourage cultural and intellectual engagement with the Chinese people, remembering that blue jeans and rock 'n' roll helped to win the Cold War.

Tariff Relief. When people try something repeatedly and it still doesn't work, they should stop doing it—especially when the consequences turn out to be just what conservative economists have long predicted they would be.[49] With tariffs, the proper reform is not only to get rid of the individual tariffs that have backfired, but also to build institutional safeguards against future abuse.

We are five years into the biggest experiment with tariffs since the Great Depression, and the results are in: The new tariffs raise consumer prices for ordinary Americans by about $1,200 per household every year[50] and benefit only a small number of special interests. Steel and aluminum tariffs, enacted on national security grounds, angered allies. Beijing made not a single substantive reform in

response to four rounds of tariffs plus an attempted Phase One agreement. The Biden Administration has left the tariffs in place and is expanding them to pursue progressive policy goals.

The first order of business for a new Administration that is focused on American workers and consumers is to repeal all tariffs enacted under Section 232 of the Trade Expansion Act of 1962[51] and Sections 201 and 301 of the Trade Act of 1974.[52] The President can do this unilaterally, and Congress can do it through legislation.

The second order of business requires Congress to pass legislation repealing Sections 232, 201, and 301. The U.S. Constitution places all taxing authority with Congress[53] and none with the President. Congress used those provisions of law to delegate some of its taxing authority to the President because it was having trouble passing "clean" tariff legislation in the 1960s and 1970s. Unless and until this constitutional question about delegation is addressed, important reforms are available to the next Congress and the next President.

Congress faced a problem of collective action in the 1960s and 1970s. As a whole, Members generally wanted to lower tariffs, but few individual Members were willing to remove tariffs that benefited special interests in their districts. Trade bills were invariably watered down through amendments and logrolling. The thinking was that the President, whose constituency is the entire nation, would be less prone to special-interest pleading than Members of Congress would be, so Congress delegated some of its tariff-making authority to the President in 1962 and 1974 trade legislation.

Delegating tariff-making might have worked in the short run, but in the long run, it was both constitutionally dubious and ripe for abuse. That came to pass in 2018. The Section 232 steel and aluminum tariffs, invoked in 2018 against Canada, Europe, and other allies on national security grounds, raised car prices by an average of $250 per vehicle and gave America the world's highest steel prices. They also harmed the construction, canned food and beverage, and other metal-using industries.

While this may have benefited the steel industry itself, each steel job saved cost an average of $650,000 per year that had been taken from elsewhere in the economy.[54] That is no way to strengthen American manufacturing. The New York Federal Reserve estimated in 2019 that the Section 301 China tariffs cost the average household $831 per year,[55] a figure that has likely increased with inflation.

The new tariffs have a clear record of failure—as conservative economists almost unanimously warned would be the case. Job number one for the next Administration is to return to sensible trade policies and eliminate the destructive Trump–Biden tariffs.

Strengthening American Manufacturing. The decline of American manufacturing is a common political trope in both parties, typically invoked before a call for more government intervention. This narrative has several problems. One is that

American manufacturing output is currently at an all-time high. The record was not set during World War II and not during the 1950s boom. Output did not peak when manufacturing employment peaked in 1979 or during the Reagan economic revival in the 1980s. It is actually higher now than it has ever been.

American manufacturing is buoyant because each manufacturing worker's productivity is also at an all-time high. The key to prosperity is doing more with less. The next President should ignore special interests and populist ideologues who want government to do the opposite through industrial policy, trade protectionism, and other failed progressive policies.

It takes surprisingly few people to achieve America's record-high manufacturing output—currently about 13 million people out of a workforce of more than 160 million, compared to the 1979 peak of 19.5 million people out of a workforce of 104 million.[56] Productivity growth has freed the time and talents of millions of people for other, additional uses.

The belief that manufacturing has to shrink for services to grow is the zero-sum fallacy against which sensible economists often warn. It is anathema to the optimism, hope, and confidence that are the natural birthright of conservatives. Growing productivity enables more output of both manufacturing and services. That is why America continues to have sustained booms and record-setting real GDP despite the long-run decline in manufacturing employment.

Economists distinguish between two types of growth: extensive and intensive. Extensive growth is the Soviet and Chinese model for manufacturing: If you have more people use more resources, they will create more output. Extensive growth is doing more with more; intensive growth is doing more with less. That is where America's superpower lies. The story of American manufacturing is one of intensive growth dating back to our agricultural origins. Conservative leaders should draw on this history to position America for continued success. With intensive growth, it is not manufacturing *or* services; it is manufacturing *and* services.

Retaliatory Tariffs. Raising tariffs on another country almost always invites retaliatory tariffs against the U.S. The latter tend to be directed at politically sensitive American exports. Retaliatory tariffs by both China and American allies in response to the 2018 steel tariffs were targeted primarily at American agriculture. According to the U.S. Department of Agriculture, those tariffs cost farmers $27 billion with losses concentrated particularly in heartland states.[57]

Retaliatory tariffs also targeted U.S. industries that were not protected by tariffs. Many imports become inputs into U.S. manufacturing. The motorcycle maker Harley-Davidson was already facing higher production costs as domestic steel producers raised their prices to accommodate the new steel tariff. A retaliatory tariff on its motorcycles imposed by the European Union further raised its prices and hurt its export business. Harm to such innocent bystanders was another unintended (though foreseen) consequence.

CHART 2

Total U.S. Industrial Production



SOURCE: Federal Reserve Bank of St. Louis, "Industrial Production: Total Index," https://fred.stlouisfed.org/series/INDPRO (accessed March 2, 2023).

heritage.org

Federal Reserve research shows that the tariffs have cost about 75,000 manufacturing jobs while creating only about 1,000 jobs in the steel industry—not including the effects of the retaliatory tariffs described above.[58] Higher steel prices added an average of $250 to the price of new cars, and larger trucks—the vehicle of choice in rural America—were hit even more dramatically.[59]

Trade is generally a win-win for both participants. Tariffs are a lose-lose-lose game, with the tariff raiser losing affordable goods, the tariff target losing exports, and the tariff raiser losing again from retaliatory tariffs. Tariffs also have an additional overlooked hidden cost: Companies redirect resources to dodge tariffs by redesigning products, switching to more expensive suppliers, using lower-quality materials, and lobbying. This might be good for lawyers, but it is bad for the economy. These resources could have been used instead to make a better product more cheaply.

Conservatives warned against retaliation from the beginning: It was exactly what happened after the 1930 Smoot–Hawley tariffs that worsened the Great Depression.[60]

Undoing the Normalization of Protectionism. Inertia is one of the strongest forces in politics. Radical new policies can become the new normal very quickly and are extremely difficult to unwind if they backfire. This happened with the Trump Administration's progressive turn on protectionism. The Biden Administration quickly undid the Trump Administration's conservative regulatory reforms but left its progressive, self-defeating trade policies in place—in many cases even strengthening them.

Two presidential Administrations is a long time in politics, and the next conservative Administration will have a tough time getting tariff relief past a bureaucracy that dislikes change and special interests that will fight hard to preserve their special privileges. But given the stakes for future American prosperity, it will be worth it.

Dealing with Disruption. It is true that trade is disruptive. Though its long-run effect on employment is approximately zero, in the short run it can cost jobs and even depopulate towns.[61] America's resilience depends on its ability to adjust, but successful and timely adaptation is generally spontaneous in nature—the work of human action but not human design. Planned adjustment by governments has a much poorer track record.

Context is also important to adjustment efforts. Technological change costs approximately six times more jobs as does trade (though, again, only in the short run).[62] Any argument made against trade's disruptive effects applies even more strongly to technological change, yet no one seriously argues for reversing the dramatic changes the Internet has wrought.

More than 11 million American jobs turn over through hirings, firings, retirements, layoffs, and resignations every month,[63] and nearly 85 percent of all jobs turn over in the course of a year. Yet America has suffered only four bouts of double-digit unemployment during the past century. Two of them, the Great Depression and the comedown from the 1970s stagflation, were due to monetary mismanagement, not trade.[64] The third, the Great Recession, was due to a financial crisis worsened by monetary mismanagement, not trade.[65] The fourth was due to COVID-19 lockdowns, not trade.[66]

Using trade restrictions to slow this churn is a mistake for two reasons: (1) trade is at best a minor contributor to job churn compared to other factors like technology, changing consumer tastes, inflation, and business cycles, and (2) churn is evidence of a healthy economy. Agricultural economies have low job churn and low living standards.

When people see better opportunities, they should be allowed to pursue them. To do otherwise slows economic growth, harms individual dignity, removes

humanity from our policies, and can contribute to societal ills like depression, addiction, and isolation.

Trade adjustment could be made easier by regulatory reforms to remove its attendant friction. These include:

- Less restrictive zoning and permit rules;
- Occupational licensing reform;
- Automatic sunsets for new regulations; and
- A presidentially appointed Regulatory Reduction Commission that would examine the Code of Federal Regulations each year and send repeal packages to Congress that include old, obsolete, redundant, and harmful regulations.[67]

People who need help should be able to get it. Progressive trade policies help only special interests while harming the very people they are supposedly intended to help.

Trade Adjustment Assistance. Trade adjustment assistance is a popular policy for aiding displaced workers. Though flawed, it is a bargaining tool that can potentially help to get sound trade policy adopted. A conservative Administration should approach trade adjustment assistance with caution and use it as a last-resort political bargaining tool and not as a first-resort policy. Funding for job training programs and the like will typically find its way to labor union slush funds, left-leaning nonprofits, and other progressive causes that will not necessarily help displaced workers.

A better approach to trade adjustment assistance, if it must be expanded, is direct cash transfers. Not only would this prevent progressive hijacking of programs and their funding, but cash is the most flexible type of aid. It treats people as adults and lets them make their own choices about their next steps. Major life decisions should be made by individuals for themselves, not for them in Washington.

Trade adjustment assistance should treat workers who lose their jobs to international trade the same as workers who lose their jobs for any other reason are treated. While that will not likely come to pass in the near future, steps in that direction are possible. Technological change displaces six times as many workers as trade displaces, yet workers displaced by technology get no special treatment. Nor should they. Unemployment remains low because it grows alongside population, and real wages continue to rise over time. Trade-displaced workers should be eligible for the same benefits for which anyone else is eligible, no more and no less.

Supply Chain Lessons from the Baby Formula Debacle. Protectionism builds weaknesses into supply chains. This was demonstrated vividly by the baby formula shortage, which may have peaked in 2022 but remains an ongoing concern.

Domestic baby formula producers benefit from a decades-old tariff that averages 17 percent, which is effectively high enough to shut imports out of the market. As if tariffs were not enough, other requirements also help to keep competition out of the market: ever-evolving labeling requirements and nutritional standards that (conveniently for domestic manufacturers) are always just slightly different from international standards. As a result, before the formula shortage in 2022, approximately 98 percent of the country's baby formula was produced domestically.

With foreign competition out of the way, other government policies helped to concentrate almost the entire domestic formula industry into four firms. Roughly 40 percent of baby formula purchases are made by state-level food assistance programs, which typically do not let families choose their own formula brands. Instead they must buy from a single producer, which guarantees producers large market shares in states where they win contracts. This situation gives incumbent producers a cozy existence but puts consumers at risk. Like all protectionist policies, the benefits are concentrated in the hands of a few producers while the costs and risks are widely distributed.

With so many eggs in so few baskets, whenever something goes wrong—which is inevitable even when nobody is at fault—families find themselves scrambling. That happened early in 2022 when contamination entered a Michigan facility that makes about 40 percent of America's baby formula. Trade protectionism all but eliminated other options for many parents, who suddenly found empty shelves and sky-high prices for an essential item that many of them were already struggling to afford—while families in other countries were unaffected.

In response, Congress passed the Formula Act[68] in the summer of 2022. The act eased formula tariffs and loosened never-needed labeling requirements and other import restrictions, but it was temporary. It expired at the end of 2022, leaving families still vulnerable to the cascading consequences that ensue if one thing goes wrong at only one plant.

The baby formula debacle has two lessons for the next Administration.

- The Administration needs to attack the root of the problem. Temporary fix-it bills are better than nothing, but they leave the rot in place. The President needs to encourage bold liberalization.

- Strength comes from openness. In the real world, markets fail. Factories will get contaminated, and health inspectors will not always be as thorough as they should be. The baby formula market is essentially a natural experiment in self-sufficient industrial policy. When something went wrong, that single

failure point crashed the whole system. It should not be that way, and the next President can change it.

Part of the problem is that the supply chain analogy itself causes sloppy thinking. In a chain, a link is connected only to the link ahead of it and the link behind it and not to any other links. Real-world supply chains are more like networks in which each point connects directly to countless others and is rarely more than six degrees of separation from nearly anywhere on Earth. Because market failures happen all the time, it is important to have as many connections as possible. Americans need access to more ways to adapt and reroute around failure points, especially for essential products like baby formula.

Trade protectionism makes us more vulnerable, but free trade makes our families and communities more resilient. Loosening restrictions similar to the ones that stunt the baby formula market would make it easier to navigate future crises while preventing the progressive and rent-seeking power grabs that come with every crisis, whether it is as isolated as a baby formula shortage or as expansive as a pandemic.

Mutual Recognition. A simple way to reduce friction in supply networks is mutual recognition of other industrialized countries' regulatory standards. This can be done either in a larger trade agreement or independently. For baby formula, this would mean allowing in brands that meet European Union standards even if they do not meet Food and Drug Administration (FDA) labeling requirements. Infants' nutritional needs do not change across borders. If a formula is deemed healthy for European babies, then it is also healthy for American babies. The reverse is equally true.

Mutual recognition could help to open new markets for American producers in countless industries and give American consumers access to countless new products on more competitive terms. For example, U.S. regulations require washing machine power cords to be at least six feet long, while the U.K. requires them to be at least two meters.[69] The difference (about six inches) affects neither safety nor performance, but it does keep American-made washing machines out of an important foreign market. A mutual recognition policy would circumvent the problem.

Given the recent interest in increased antitrust enforcement, conservatives should embrace policies like mutual recognition that have the double benefit of increasing market competition while decreasing government's regulatory footprint.

The U.S. should enact mutual recognition agreements for a wide variety goods with the United Kingdom, European Union, Japan, South Korea, Australia, and other governments with high standards comparable to our own. This would have especially large benefits for pharmaceuticals, because America's FDA drug approval process is both slower and more expensive than those of other countries without being any safer. Americans would gain access to more and lower-cost medical

treatments, and American pharmaceutical companies could defray development costs and innovate faster by gaining access to more markets, all while cutting prices.

The Jones Act. The Jones Act (Merchant Marine Act of 1920)[70] requires that ships traveling between U.S. ports must be U.S.-built, U.S.-owned, and U.S.-crewed. In practice, this is an "America last" policy that has decimated the American maritime industry.[71] Because of Jones Act regulations, American-built ships cost three to four times more to build than foreign-built ships cost. As a result, the entire Jones Act fleet is down to just 92 ships, many of which are old and obsolete. In fact, Jones Act–compliant shipping is so expensive that it is often cheaper for East Coast ports to import oil from Vladimir Putin's Russia than it is to send it up the coast from Houston or New Orleans. The national security (to say nothing of energy security) implications of reliance on Russia for oil and gas are obvious.

The Jones Act's original national security justifications are just as dubious. The act's goal was to guarantee a sizable fleet of American ships that could be pressed into war service if needed. Aircraft carriers and other post-1920 naval innovations have made this argument obsolete. An $800 billion defense budget has plenty of room to maintain a Navy to defend American security interests around the world. The U.S. Navy would likely prefer not to use Jones Act ships anyway, because they tend to be older and in poorer condition than its own ships or similar foreign-made but domestically owned commercial ships that could also be pressed into service.

As with many other industries, U.S. shipbuilding could be the envy of the world if it could operate in a free market, but the maritime lobby prefers a quiet, cozy existence on the dole even as it harms American consumers and national security. The next conservative Administration should unleash American potential by unilaterally enacting Jones Act exemptions wherever allowed, as currently happens most years during hurricane season, and working with Congress to repeal the Jones Act.

Trade and Inflation. The post-COVID inflation spike may be over long before the next Administration takes office, but keeping it under control should remain a high priority. Free traders should not oversell their case by saying that liberalization would solve inflation. Inflation is predominantly a monetary phenomenon, not a trade phenomenon, but tariff relief can help at the margin by immediately lowering prices on tariffed goods and slightly boosting long-term growth.[72] While this would not affect the money supply, which is inflation's key variable, even rolling back the tariffs enacted since 2017 would likely have a positive effect on the Consumer Price Index.

The easiest way to curb inflation (or to create it) is for the Federal Reserve to work the monetary side of the equation, but the real output side has a similar effect on prices. Lifting trade barriers is one way to boost output. It also has the added benefit of requiring no additional spending. At the very least, this can make the Federal Reserve's job easier as the spending excesses of Congress and President Biden continue unabated in the coming years.

It is important not to oversell trade's inflation benefits as a cure-all, but at the margin, it can help. The next Administration should keep this in mind as it tries to cope with this politically volatile issue.

Trade and Foreign Policy. We have seen how trade liberalization would boost the domestic economy and make American businesses more competitive, but conservative trade policies also benefit America's foreign policy interests. Policymakers should therefore:

- Negotiate multilateral and bilateral trade agreements.
- Reform the World Trade Organization or build a successor organization with membership limited to liberal democracies.
- Repeal the Jones Act to replace Russian energy imports with domestic production.
- Develop a multifaceted, long-term China policy that takes seriously America's biggest foreign policy threat and deals with it on several fronts.

National Security. The most persuasive arguments against a market-oriented trade policy come from another national objective: national security. Protectionism and similar progressive policies tend to weaken American security, but trade creates peace. The more countries trade, the less likely they are to fight one another and the more robust their supply networks will be. Going to war with customers is bad for business.

Without a strong economic interest in continued U.S. investment and exports, for example, China's behavior would likely become increasingly less predictable and more dangerous. Anyone who thinks Chinese Communist Party (CCP) General Secretary Xi Jinping and the government in Beijing are bad actors now—which they are—should consider what would happen if the Chinese convinced liberal countries like the United States to decouple from them, leaving them free to pursue whatever policies they wish without the significant counterweight that America can provide.

That is one reason for Xi Jinping's emphasis on centralization and self-sufficiency. He does not like international pressure about his government's human rights violations and bad-faith trading policies, and decoupling from trading partners like America is one way to avoid that pressure. A less constrained China would be poorer but much more unstable and dangerous to its neighbors and to America than it would be if it still had to engage regularly with the rest of the world.

Trade Promotion Authority. Trade agreements can take years to negotiate. One way to accelerate the process is for Congress to grant the President Trade Promotion Authority (TPA). It was first granted under the 1974 Trade Act, which

contains the Sections 201 and 301 tariff delegations. TPA, then called fast-track, has aided several trade agreements, including NAFTA and the USMCA, which took effect in 2020. TPA has lapsed before during slow periods in trade policy, most recently in July 2021, and remains lapsed today.

The President should work with Congress to renew TPA to rationalize negotiations for upcoming trade agreements with the United Kingdom, the European Union, and others.

Both supporters and critics have questions regarding TPA's implications for the constitutional separation of powers, and policymakers should take those questions seriously. As things currently stand, Congress has some oversight powers over the President's negotiations under TPA, but they are limited. Congress can increase its oversight by passing new legislation superseding relevant provisions of the 1974 Trade Act. However, that is a double-edged sword. A Congress that largely favors free trade could exercise oversight to keep the President on the straight and narrow in trade negotiations. A progressive Congress would instead insist that the President negotiate for as many trade-unrelated provisions as possible to benefit labor and green constituencies while pushing progressive policies on the U.S. and its trading partners.

On balance, a single voice at the negotiating table that is subject to congressional oversight is the best posture for American workers and consumers. A fractious Congress has yet to demonstrate the capacity to negotiate with other nations, but it can help to hold the Administration accountable.

Trade Agreements with the United Kingdom, European Union, and Others. Even with a renewed TPA, trade agreement negotiations will likely take years. The Trump and Biden Administrations were not inclined to start the process, so that job may well fall to the next Administration. In that sense, the delays may end up being worth it.

If there is one lodestar to follow, it is to restrict these agreements to *trade issues only*. Ever since NAFTA, trade-unrelated provisions have taken on a greater role in trade agreements. These create sticking points and are routinely hijacked by rent-seeking special interests and progressive ideologues who demand subsidies, carve-outs, and economically distorting labor and environmental standards that have nothing to do with trade. If governments are to negotiate these issues, they should do so in separate agreements so they do not torpedo efforts to liberalize and engage with allies. Trade agreements should lighten burdens, not create new ones by attempting to address non-trade issues.

Policy leaders in the United States and the United Kingdom, including experts from The Heritage Foundation and the Competitive Enterprise Institute, have prepared a model trade agreement along these lines.[73] Along with TPA renewal, this would greatly reduce negotiating costs. This template is also readily adaptable for agreements with Europe and any other allies that are willing to

liberalize their economies and build a stronger alliance with America. The draft U.S.–U.K. agreement includes an accession chapter to allow others to join on the same terms.

Restoring or Replacing the WTO Dispute Resolution Process. The World Trade Organization as we know it may be mortally wounded. This deprives the U.S. of the WTO's dispute resolution process, under which the U.S. it won 85 percent of the cases it brought. The WTO's slow death began under the Obama Administration, which refused to allow appointees to the WTO's appellate board, which as a consequence is now nonfunctional. Both the Trump and Biden Administrations have continued the Obama Administration's approach.

That means that every case in the dispute resolution process will sputter to a halt as parties file appeals that cannot be heard. If the WTO is no longer fit for that purpose, it may be better to look in a different direction. More than 20 years ago, a Heritage Foundation senior fellow proposed that America and other free economies should form a Global Free Trade Alliance that is open to all countries that adhere to a truly free market system with appropriate safeguards such as property rights, lack of corruption, and enforcement of contracts.[74] Alongside a general agreement on low to zero tariffs, the alliance would move to reduce the effect of nontariff barriers (such as the previously noted baby formula ingredient and labeling barriers) by basing trade around the principle of mutual recognition. Such an alliance could be started by a trade agreement between the United States and, for example, the United Kingdom with an accession chapter allowing others to join if they meet the criteria.

It would be essential for a Global Free Trade Alliance to avoid the WTO's most serious problem: the exemptions from its rules that are granted to developing countries. When China joined the WTO in 2001, it was granted developing-nation status, which it continues to use to dodge rules that should apply to it. Other countries have used that status to delay needed reforms. Rule exemptions give some countries a perverse incentive to remain poor and autocratic.

A Global Free Trade Alliance would allow the U.S. to enjoy the benefits of a rules-based international trading system without the WTO's shortcomings. Negotiation costs would be lower because the countries would already be allied on many issues. In addition, there would be no separate tiers with different rules, and this would give developing countries an incentive to liberalize. In addition to being good for its own sake, liberalization would give them entry into a prestigious club that tilted toward America's orbit and away from China's.

Closing the Export–Import Bank. The Export–Import Bank (EXIM) is an unusually clear example of how vulnerable trade protectionism is to being hijacked by special interests.[75] In most years, about half of EXIM's business benefits a single company, Boeing. Their relationship is so cozy that EXIM's nickname around Washington is "the Bank of Boeing."

Unlike most other agencies, EXIM has a charter that expires. Congress must renew it periodically, or else the agency will permanently close. Its current charter expires at the end of 2026. Closing this New Deal–era legacy agency would be a conservative victory on a number of fronts. It is also a winnable battle: Congress just needs to do nothing.

Conservatives have both foreign policy and economic reasons to oppose EXIM. EXIM has a long history of providing financing for authoritarian governments in China, Russia, and the Middle East that often oppose U.S. foreign policy interests, and its deals often oppose U.S. economic interests. EXIM financing also harms domestic airlines. Many EXIM financing deals enable foreign state-run airlines to buy Boeing jets at a discount. These foreign airlines, subsidized by the U.S. government, then compete directly with U.S. airlines on international routes.

More recently, the Biden Administration has expanded EXIM's mission to advance progressive policy goals, including limits on financing for projects that involve fossil fuels or contribute to climate change, preferential treatment for renewable energy projects, and quotas for projects that benefit women-owned and minority-owned businesses. All of these could raise EXIM's default rates, putting taxpayer dollars at risk.

The strongest argument in EXIM's favor is that it boosts U.S. exports by financing projects that would otherwise never receive financing. We now have evidence that this argument is false: EXIM does not finance additional exports; instead, it largely substitutes for other forms of export financing that would occur anyway.

EXIM's authorization lapsed in 2014–2015 because of conservative opposition to renewing its charter. During this lapse, EXIM maintained its existing portfolio but was unable to take on new business. Boeing reported no trouble finding alternative financing and even reported record profits during EXIM's lapse while working to fulfill a seven-year backlog of orders.[76]

EXIM boasts an extremely low default rate, but that is because of selection bias. EXIM overwhelmingly takes on low-risk projects that private banks would be happy to finance, although this admittedly could change somewhat with EXIM's Biden-era mandates to finance climate and other policy-focused projects.

EXIM is also a textbook example of regulatory capture.

- It has a long record of deals with authoritarian governments.
- It subsidizes direct foreign competitors of domestic businesses.
- It has been hijacked by progressives to advance their climate and other preferred policies.

- Its beneficiaries have proven they can get adequate financing from private banks.

EXIM's charter expires at the end of 2026. The agency will close automatically unless Congress and the President decide to extend it. Closing EXIM should be one of the next Administration's easiest decisions.

Adopting a Multi-Pronged China Strategy. An effective American policy toward China needs to take a realistic view of the country, its leaders, their strengths, and the serious challenges they face. It should be comprehensive and flexible. A threatened CCP is dangerous, perhaps now more than at any time since Mao Tse-Tung, as Xi Jinping continues to use strong-arm tactics to consolidate his power and saber-rattling to challenge the international order.

At the same time, recent revelations about China's official statistics overstating its GDP by 30 percent track well with other problems that were already known.[77] These include one of the world's worst demographic aging curves thanks to China's one-child policy; a population that may already be declining; an unsustainable debt load that is already causing problems; countless failed boondoggles, from empty cities to its underwhelming Belt-and-Road Initiative, that are wasting significant resources; Xi Jinping's authoritarian turn; increasing state control of the economy; and a zero-COVID policy that has sabotaged the economy and driven away foreign investment.[78]

America has its problems, but it is in better shape than China on nearly every measure, especially in the long run. While the facts on the ground should inoculate the next Administration against the most strident China fearmongering circulating in the media and in Washington, that does not mean that the government in Beijing is no threat to American interests. The question is: What should we do about it?

A serious China policy will require American policymakers to integrate doctrines, institutional prerogatives, expertise, and realistic objectives. Traditional Cabinet-level bureaucracies like those at the Departments of Defense, State, and Commerce will need to work together to pursue a comprehensive American strategy. Scores of incremental, narrowly targeted policies are necessary. They will not make for good soundbites on cable news, and many will operate slowly and out of sight from most news cycles even as progress is made.

An effective China policy must also allow for adaptation because the CCP will not sit idly by. As people react to developments, America needs flexible options. Trade isolationism is inherently inflexible because it reduces the number of contact points with China.

This is a tougher political sell than loud, simplistic jeremiads, but going the extra mile to solve these difficult coordination problems is vital to America's interests. Trade and engagement with China are necessary if we are to contain the threats that China poses to its neighbors and to the U.S. The next Administration should:

- **End China's developing-nation status in the WTO and other international organizations.** China is an advanced manufacturing economy and should be treated as such, even if its political and legal institutions remain those of a developing nation, to prevent it from exploiting its status to gain special privileges.

- **Use a target, not a blanket.** There should be actions against Chinese firms that are known to have engaged in unfair trade practices such as intellectual property theft. Rather than blanket tariffs or non-tariff barriers aimed at entire Chinese industry sectors, firms that act in bad faith should be targeted individually. This policy was employed to good effect early in the Trump Administration but was abandoned in favor of a less effective blanket tariff policy.

- **Rejoin the Trans-Pacific Partnership.** Dropping out of the Trans-Pacific Partnership agreement might have been the Trump Administration's biggest trade policy mistake. The TPP was already negotiated and would have strengthened an alliance against China, including most of its biggest trading partners in East Asia and the Americas. America's departure created tensions and infighting, distracting the U.S. and its allies from the goal at hand: countering China. The other 11 TPP countries continue, without American input or influence, under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPATPP) to develop a modern institutional framework to contain Chinese commercial imperialism.

  Rejoining this alliance should be a top priority in the next conservative Administration's China policy. Accession negotiations are likely to be difficult, given that the CPATPP suspended several clauses that were important to the United States (such as provisions relating to patents and aspects of investor-state dispute resolution) when the U.S. pulled out of the TPP agreement in 2017.

  Diplomatic and economic pressure against Beijing will be more effective when its largest trading partners work in concert. Beijing's diplomats will have a hard time employing a divide-and-conquer policy against a united front of the sort that the TPP offers.

- **Refocus the Indo-Pacific Economic Framework for Prosperity on trade.** President Biden began the process to create IPEF in 2022, but any agreement will likely still be under negotiation when the next Administration takes office. IPEF is similar to the TPP, but its member

countries are mostly China's neighbors in Asia. Like the TPP, it seeks to create an alliance to push China toward the rule of law, but the Biden Administration so far has left trade entirely out of the agreement. Instead, the IPEF negotiations are focusing entirely on non-trade issues like climate and labor policy—issues that give progressives opportunities to impose their policies on other countries and provide rent-seeking opportunities for labor unions and politically connected businesses in renewable energy and other favored industries.

IPEF has the potential to be a powerful diplomatic tool that helps to bring countries into America's orbit and away from China's. Beijing's chauvinistic approach to foreign policy has alienated most of China's neighbors and allies. They follow along because they lack alternatives. IPEF and the TPP could offer them a way out and make it easier for China's smaller neighbors to stand up for themselves in a united front as they move toward American-style institutions that protect civil, political, and economic liberties.

IPEF could do all that, and so could the TPP, but America currently has no voice in the TPP, and IPEF risks becoming little more than another tool that progressives can use to force their policy wish list on countries that don't want it. From the perspective of IPEF's members, the Biden Administration's approach is little different from Beijing's. The next Administration can give China's neighbors a better choice by refocusing IPEF on trade, dropping most of its non-trade issues, and turning it into a forum to promote democracy and strengthen alliances while pressuring Beijing to make needed reforms.

- **Play the long game.** It took two generations to win the Cold War, and there were many reasons for that success. The fact that the planned economy is inherently inferior to free-market capitalism played a role. So did diplomatic, military, and economic pressure from free countries. But culture was just as important, and it did not come from any government. Blue jeans and rock 'n' roll helped to win the Cold War as much as any deliberate policy did. So did images of fashion and prosperity in American movies and television shows like *Dallas*.

  Such informal bottom-up processes will also play a vital role in helping to turn China from an authoritarian threat into a freer and less hostile power. It will take a long time, and the slow process will garner few headlines, but it can work. A conservative Administration will support efforts by ordinary Americans to engage with ordinary Chinese people through social networks,

Internet memes, fashion, movies, student exchange programs, tourism, and more. China's leaders are set in their ways, especially with Xi Jinping presumably now in power for life, but the younger generation is more open than their parents were—more individualistic and open to change.

Effective outreach to the Chinese people will need the same humility that other sound trade policies require. Government-directed cultural and economic outreach risks being heavy-handed and could backfire. Everyone involved needs to know that the process is generational in scope and will not work overnight. At the very least, Washington should stay out of the way as much as possible when regular people want to contact each other across national, language, and cultural divides.

Each of these many components, from tariffs to trade agreements to culture, is a small part of a larger China policy. Many are not attention-grabbing and cannot be put into sound bites. Cultural engagement is not something Washington can plan. China's own demographic and debt problems, along with aging leadership and growing discontent over the zero-COVID policy, might even cause an internal collapse. American policy must therefore be prepared to face any contingency.

CONCLUSION

A conservative trade policy needs a conservative vision. America's founding institutions, based on free trade and entrepreneurship, have made America the world's leading economy and will help keep America strong through the next century.

However, recent departures from those principles have hurt America's economy and weakened alliances that are necessary to contain threats from Russia and China. Reaffirming those principles through policies of openness, dynamism, and free trade will boost America's economy, make us more resilient against crises, and remove opportunities for progressives and rent-seekers to use the levers of government for their own purposes. Rediscovering conservative principles on trade policy and embracing America's long history as the world's leading commercial republic are an important part of restoring a government of, by, and for the people.

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Section Five

INDEPENDENT REGULATORY AGENCIES

In addition to the executive departments and agencies discussed previously, a number of independent commissions exist that are loosely affiliated with the executive branch. In general, the President can appoint people to these commissions but cannot remove them, which makes them constitutionally problematic in light of the Constitution's having vested federal executive power in the President. Nevertheless, they exist, their constitutional legitimacy has generally been upheld by the courts, and there will be an opportunity for the next Administration to use them as forces for good, particularly by making wise appointments.

Few appointments to these commissions will be as important as the President's selection of the next chairman of the Federal Communications Commission (FCC). In Chapter 28, FCC Commissioner Brendan Carr writes that the FCC chairman "is empowered with significant authority that is not shared" with other FCC members. Under a new chairman, he writes, "[t]he FCC needs to change course and bring new urgency to achieving four main goals: [r]eining in Big Tech; [p]romoting national security; [u]nleashing economic prosperity; and [e]nsuring FCC accountability and good governance."

"The FCC," writes Carr, "has an important role to play in addressing the threats to individual liberty posed by corporations that are abusing dominant positions in the market." Nowhere is that clearer "than when it comes to Big Tech and its attempts to drive diverse political viewpoints from the digital town square." Carr writes that the FCC should require more transparency from Big Tech, which today "offers a black box." And it should issue "an order that interprets Section 230"—which provides protection from legal liability to online computer services that

moderate content in good faith—"in a way that eliminates the expansive, non-textual immunities that courts have read into the statute." In addition to taking unilateral action, Carr says, the FCC should work with Congress on legislative changes to ensure that "Internet companies no longer have carte blanche to censor protected speech while maintaining their Section 230 protections."

Carr writes that during the Trump Administration, the FCC took an "appropriately strong approach to the national security threats posed by the Chinese Communist Party." The FCC put Huawei on its Covered List of entities—its list of those posing "an unacceptable risk" to U.S. national security. Carr writes that TikTok also poses a "serious and unacceptable" risk to U.S. national security, while providing "Beijing with an opportunity to run a foreign influence campaign by determining the news and information that the app feeds to millions of Americans," and the next Administration should ban it. What's more, Carr writes, "U.S. businesses are aiding Beijing—often unwittingly"—in its effort to become, by 2030, "the global leader in artificial intelligence." In part, they are doing so by providing "Beijing access to their high-powered cloud computing services." Carr asserts that "it is time for an Administration to put in place a comprehensive plan that aims to stop U.S. entities from directly or indirectly contributing to China's malign AI goals ."

Former Federal Election Commissioner Hans von Spakovsky writes in Chapter 29 that while "the authority of the President over the actions of" the Federal Election Commission "is extremely limited," the President "must ensure that the [Justice Department], just like the FEC, is directed to only prosecute clear violations" of the Federal Election Campaign Act. "The department must not construe ambiguous provisions…in a way that infringes on protected First Amendment activity," he writes. The FEC has six members, three from each party, and its determinations require a majority—so, they require the support of at least one member of each party. DOJ should not "prosecute an individual for supposedly violating the law when the FEC has previously determined that a similarly situated individual has not violated the law," writes von Spakovsky. Moreover, he writes that the "President should vigorously oppose all efforts"—such as the language in the "For the People Act of 2021"—"to change the structure of the FEC" so that it would have an "odd number" of members. The current structure "ensures that there is bipartisan agreement before any action is taken and protects against the FEC being weaponized."

In Chapter 27, David R. Burton writes that the Securities and Exchange Commission (SEC) "should be reducing impediments to capital formation, not radically increasing them" by pushing a costly "climate change" agenda, as it is doing under the Biden Administration. Discussing the Federal Trade Commission, Adam Candeub writes in Chapter 30, "Antitrust law can combat dominant firms' baleful effects on democratic" notions—"such as free speech, the marketplace of ideas, shareholder control, and managerial accountability as well as collusive behavior

with government." Under the Biden FTC, he writes, firms try "to get out of antitrust liability by offering climate, diversity, or other forms of ESG-type offerings." Candeub says that state AGs "are far more responsive to their constituents" than the federal government generally is, and he recommends that the FTC establish a position in the chairman's office that is "focused on state AG cooperation and inviting state AGs to Washington, DC, to discuss enforcement policy in key sectors under the FTC's jurisdiction: Big Tech, hospital mergers, supermarket mergers, and so forth."

27

FINANCIAL REGULATORY AGENCIES

SECURITIES AND EXCHANGE COMMISSION AND RELATED AGENCIES

David R. Burton

The primary purposes of the laws and regulations governing capital markets and of capital market regulators are to deter and punish fraud and other material misstatements to investors; foster reasonable, scaled disclosure of information that is material to investors' financial outcomes and proxy voting decisions; and maintain fair, orderly, and efficient secondary capital markets.

The Securities Act of 1933[1] and the Securities Exchange Act of 1934[2] reflect nearly nine decades of rushed and haphazard amendments. The securities laws are now extremely complex and do not constitute a coherent, rational regulatory regime. For example, the current SEC has proposed a climate change reporting rule that would *quadruple* the costs of being a public company.[3] This would have a substantial adverse impact on existing companies. Over time, it would also substantially reduce the number of public companies and therefore the number of investing options available to ordinary Americans. The Securities and Exchange Commission (SEC) should be reducing impediments to capital formation, not radically increasing them.

The SEC and Congress should fundamentally reform the securities laws governing issuers, broker–dealers, exchanges, and other market participants. Among other things, they should establish a simplified and rationalized securities disclosure system with:

- Three basic categories of firm: private firms, an intermediate category of smaller firms,[4] and public firms;
- Reasonable, scaled disclosure requirements; and
- Specified secondary markets for the securities of these firms.[5]

The SEC needs to be reformed to achieve its important core functions more effectively, to improve transparency and due process, and to reduce unnecessary regulatory impediments to capital formation.[6] Under current law, the SEC Chairman has the authority to make almost all of the necessary changes.[7] Unfortunately, financial regulators, particularly the SEC and the Financial Industry Regulatory Authority (FINRA), are poorly managed and organized.

With regulatory authority delegated by the government, both the Public Company Accounting Oversight Board (PCAOB) and FINRA have proved to be ineffective, costly, opaque, and largely impervious to reform. To reduce costs and improve transparency, due process, congressional oversight, and responsiveness, PCAOB and FINRA should be abolished, and their regulatory functions should be merged into the SEC. Furthermore, Congress should establish an independent board or commission and charge it with producing a detailed report within 18 months that examines the degree to which the regulatory functions of the various other so-called self-regulatory organizations (SROs), which are no longer self-regulatory in any meaningful sense, should be moved to the SEC.[8]

Discrimination based on immutable characteristics has no place in financial regulation. Offices at financial regulators that promote racist policies (usually in the name of "diversity, equity, and inclusion") should be abolished, and regulations that require appointments on the basis of race, ethnicity, sex, or sexual orientation should be eliminated. Equal protection of the law, equal opportunity, and individual merit should govern regulatory decisions.[9]

Congress has given the SEC broad "general exemptive authority,"[10] but the SEC has used this authority only rarely. It should use this authority significantly more often to reduce the regulatory burden on issuers, particularly smaller entrepreneurs.

ENTREPRENEURIAL CAPITAL FORMATION

Financial regulators should remove regulatory impediments to entrepreneurial capital formation.[11] In the absence of the fundamental reform outlined above, the SEC should:

- Simplify and streamline Regulation A (the small issues exemption)[12] and Regulation CF (crowdfunding)[13] and preempt blue sky registration and qualification requirements for all primary and secondary Regulation A offerings.[14]

- Either democratize access to private offerings by broadening the definition of accredited investor for purposes of Regulation D or eliminate the accredited investor restriction altogether.[15]

- Allow traditional self-certification of accredited investor status for all Regulation D Rule 506 offerings.

- Exempt small micro-offerings from registration requirements.[16]

- Exempt small and intermittent finders from broker–dealer registration requirements and provide a simplified registration process for private placement brokers.[17]

- Exempt peer-to-peer lending from federal and state securities laws and reduce the regulatory burden on Regulation CF debt securities.

- Make the Title I Emerging Growth Company (EGC) exemptions permanent for all EGCs.

- Reduce the regulatory burden on small broker–dealers and exempt privately held, non-custodial broker–dealers from the requirements to use a PCAOB-registered firm for their audits.

Congress should:

- Amend the Internal Revenue Code to disregard crowdfunding and Regulation A shareholders for purposes of the 100-shareholder limit for Subchapter S corporations.[18]

BETTER CAPITAL MARKETS

To improve capital markets, the SEC should:

- Preempt blue sky registration, qualification, and continuing reporting requirements for securities traded on established securities markets (including a national securities exchange or an alternative trading system).[19]

- Terminate the Consolidated Audit Trail (CAT) program.[20]

- Abolish Rule 144 and other regulations that restrict securities resales and instead require a company that has sold securities to provide sufficient current information to the market to permit reasonable investment decisions and secondary sales.

Congress should:

- Prohibit the SEC from requiring issuer disclosure of social, ideological, political, or "human capital" information that is not material to investors' financial, economic, or pecuniary risks or returns. The proposed SEC climate change rule, which would quadruple the costs of being a public company, is particularly problematic.[21]

- Repeal the Dodd–Frank mandated disclosures relating to conflict minerals, mine safety, resource extraction, and CEO pay ratios.[22]

- Oppose efforts to redefine the purpose of business in the name of social justice; corporate social responsibility (CSR); stakeholder theory; environmental, social, and governance (ESG) criteria; socially responsible investing (SRI); sustainability; diversity; business ethics; or common-good capitalism.

- Prohibit securities regulators, including SROs, from promulgating rules or taking other actions that discriminate, either favorably or unfavorably, on the basis of the race, color, religion, sex, or national origin of such individual or group.

SEC ADMINISTRATION

To enable it to achieve its core mission more effectively, the SEC should:[23]

- Publish better data on securities offerings, securities markets, and securities law enforcement and publish an annual data book of time series data on these matters. Specifically, the SEC Division of Economic and Risk Analysis (DERA) needs to do a much better job of collecting and reporting fundamental data regarding offerings, regulatory costs, violations, enforcement, investors, state regulator taxes, fees and activities, and other matters.

- Ensure that SEC resources flow toward its core functions and away from ancillary and support functions or from missions that do not fall within the SEC's statutory charge.

- Ensure that any three SEC Commissioners are empowered to place an item on the agenda and to receive adequate staff support to do so even without the Chairman's support.

- Eliminate all administrative proceedings (APs) within the SEC except for stop orders related to defective registration statements. The SEC enforcement system does not need to have both district court cases and APs. Alternatively, respondents should be allowed to elect whether an adjudication occurs in the SEC's administrative law court or an ordinary Article III federal court.[24]

- End the practice of delegating the decision to initiate an enforcement case. The SEC Chairman—and possibly the U.S. Government Accountability Office (GAO)—should study whether other Commission delegation of authority to staff should be narrowed and whether sunsetting of such delegation of authority should be required.

Congress should:

- Require an Inspector General's (or possibly a GAO) report regarding SEC information technology spending and contracting. Spending appears to be much too high, and IT contracting is poorly managed.

- Statutorily limit the time for an investigation to two years with no extensions. Long investigations harm private parties and the quality of justice. With adequate management processes, the SEC should not need more than two years even for complicated matters.

The SEC Chairman should:

- Dramatically reduce the number of direct reports to the SEC Chairman.

- Merge SEC offices that are performing similar functions.

- Reduce the number of managers per employee.

CFTC ADMINISTRATION AND IMPROVED COMMODITIES AND DERIVATIVES MARKETS

Congress should:

- Modernize the definition of commodity (which is now largely a laundry list of agricultural commodities)[25] and clarify the treatment of digital assets.

- Clarify through an express amendment to the Commodity Exchange Act (CEA)[26] the circumstances that require a foreign swap trading platform to

register with the Commodity Futures Trading Commission (CFTC) as a swap execution facility (SEF) under Sections 2(i)[27] and 5h[28] of the CEA. Currently, it is not clear whether having one or a small number of U.S. participants would require SEF registration under prior staff guidance, which has led foreign swap trading platforms to exclude all U.S. persons from their platforms or to go through the process of seeking an exemption from registration.

- Amend Section 2 of the CEA to authorize the CFTC Chairman to remove the agency's Executive Director without a Commission vote.

- To augment Commissioners' independence, establish funding amounts for the Commissioners' offices by statute with adjustments for inflation, with no requirement for a Commissioner to obtain budget or expense approvals from the Chairman or the agency's administrative staff.

The CFTC should:

- Allocate more resources to core agency functions rather than ancillary and support operations.

- Replace the existing position limits rule, which reduces liquidity and makes markets more volatile, with further delegation of authority to the exchanges to set position limits and position accountability levels where appropriate for the relevant market.

- Reduce overly prescriptive rules implementing the CFTC's core principles.

- Apply the definitions of "U.S. Person" and "Guarantee" in the CFTC's 2020 rule on cross-border application of swaps regulations (2020 Cross-Border Rule)[29] to the regulatory requirements that remain covered by the CFTC's 2013 guidance on the subject (2013 Guidance).[30] Currently, the definition of each of these foundational terms differs depending on whether the requirement in question is covered by the 2020 Cross-Border Rule or the 2013 Guidance.

- Remove the regulatory categories of "affiliate conduit" and "foreign consolidated subsidiary" from the 2013 Guidance and the CFTC's cross-border rule on margin for uncleared swaps,[31] respectively. These categories were replaced by the concept of a "Significant Risk Subsidiary" for purposes of the 2020 Cross-Border Rule because of widespread market confusion and compliance difficulties arising from their broad and vague scope.

DIGITAL ASSETS

Both the SEC and the CFTC have been irresponsible actors in the digital asset area. They have had more than a decade to promulgate rules governing digital assets, yet the SEC has utterly failed to do so, and the CFTC has provided only minimal guidance. Instead, both agencies have chosen regulation by enforcement—and have done it poorly. They neither adequately protect investors nor provide responsible market participants with the regulatory environment that they need to thrive.

The SEC and CFTC should clarify the treatment of digital assets (coins or tokens). Specifically, they should:

- Promulgate a joint regulation providing that a holder of digital assets may not be deemed a party to an investment contract or an investor in a common enterprise unless, while the enterprise is a going concern, the holder is entitled to a share of the earnings or profits of the common enterprise or a defined flow of payments from the common enterprise in consideration of the investment or unless, upon liquidation, the holder has rights against the assets of the common enterprise. Otherwise, the digital asset shall be deemed a commodity to be regulated by the CFTC, not the SEC.

- Amend the definition of commodity to include digital assets that are not a security as so defined and amend the definition of security to make it clear that a certificate (digital, electronic, or otherwise) that represents ownership of commodities and is convertible into a physical commodity on demand is not a security but a commodity.

In the absence of regulatory action, Congress should enact legislation that achieves these goals.

IMPROVED REGULATION OF THE INDUSTRY AND SROS

Congress and the SEC need to conduct more robust oversight of self-regulatory organizations, and SROs need to be reformed; otherwise, as discussed above, SRO regulatory functions should be merged into the SEC. The SEC, FINRA itself, or Congress should:

- In the absence of merging FINRA into the SEC as recommended, require that:

  1. FINRA's Board of Governors meetings be open to the public unless the board votes to meet in executive session.

2. FINRA's Board of Governors' agenda be made available to the public in advance.

3. Board minutes describing actions taken be published without delay.

4. FINRA make available to the public in advance rulemakings that the FINRA board is expected to consider.

5. FINRA arbitration and disciplinary hearings should be open to the public and reported.

- Require FINRA arbitrators to make findings of fact based on the evidentiary record and demonstrate how those facts led to the award given (except with respect to very small claims). These written FINRA arbitration decisions should be subject to SEC review and limited judicial review.

- Require that all SRO fines, including those imposed by FINRA, should go either to a newly established investor reimbursement fund or to the Treasury. SROs should not have a financial interest in imposing fines.

- Require all SROs to conduct meaningful cost-benefit analysis as part of the rulemaking process with respect to major rules.

- Require all SROs to publish rules in proposed format and seek public comment before they are submitted to the SEC or the CFTC.

- Require each SRO to submit an annual report to Congress with detailed, specified information about its budget and fees; its enforcement activities (including sanctions and fines imposed by type of violation and type of firm or individual); its dispute resolution activities; and its rulemaking activities.

Congress should:

- Conduct annual oversight hearings on SROs.

- Either make FINRA, the Municipal Securities Rulemaking Board (MSRB), and the National Futures Association (NFA) "Designated Federal Entities" and establish an inspector general with respect to financial SROs, including FINRA, the MSRB, and the NFA or place FINRA, the MSRB, and the NFA within the ambit of an existing inspector general.

- Require the SEC and the CFTC to publish a detailed annual report on SRO supervision.

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CONSUMER FINANCIAL PROTECTION BUREAU

Robert Bowes

The Consumer Financial Protection Bureau (CFPB) was authorized in 2010 by the Dodd–Frank Act.[32] Since the Bureau's inception, its status as an "independent" agency with no congressional oversight has been questioned in multiple court cases, and the agency has been assailed by critics[33] as a shakedown mechanism to provide unaccountable funding to leftist nonprofits politically aligned with those who spearheaded its creation.

In 2015, for example, *Investor's Business Daily* accused the CFPB of "diverting potentially millions of dollars in settlement payments for alleged victims of lending bias to a slush fund for poverty groups tied to the Democratic Party" and planning "to create a so-called Civil Penalty Fund from its own shakedown operations targeting financial institutions" that would use "ramped-up (and trumped-up) anti-discrimination lawsuits and investigations" to "bankroll some 60 liberal nonprofits, many of whom are radical Acorn-style pressure groups."[34]

The CFPB has a fiscal year (FY) 2023 budget of $653.2 million[35] and 1,635 full-time equivalent (FTE) employees.[36] From FY 2012 through FY 2020, it imposed approximately $1.25 billion in civil money penalties;[37] in FY 2022, it imposed approximately $172.5 million in civil money penalties.[38] These penalties are imposed by the CFPB Civil Penalty Fund, described as "a victims relief fund, into which the CFPB deposits civil penalties it collects in judicial and administrative actions under Federal consumer financial laws."[39]

The CFPB is headed by a single Director who is appointed by the President to a five-year term.[40] Its organizational structure includes five divisions: Operations; Consumer Education and External Affairs; Legal; Supervision, Enforcement and Fair Lending; and Research, Monitoring and Regulations.[41] Each of these divisions reports to the Office of the Director, except for the Operations Division, which reports to the Deputy Director.

Passage of Title X of Dodd–Frank was a bid to placate concern over a series of regulatory failures identified in the wake of the 2008 financial crisis. The law imported a new superstructure of federal regulation over consumer finance and

mortgage lending and servicing industries traditionally regulated by state banking regulators. Consumer protection responsibilities previously handled by the Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation, Federal Reserve, National Credit Union Administration, and Federal Trade Commission were transferred to and consolidated in the CFPB, which issues rules, orders, and guidance to implement federal consumer financial law.

The CFPB collects fines from the private sector that are put into the Civil Penalty Fund.[42] The fund serves two ostensible purposes: to compensate the victims whom the CFPB perceives to be harmed and to underwrite "consumer education" and "financial literacy" programs.[43] How the Civil Penalty Fund is spent is at the discretion of the CFPB Director. The CFPB has been unclear as to how it decides what "consumer education" or "financial literacy programs" to fund.[44] As noted, critics have charged that money from the Civil Penalty Fund has ended up in the pockets of leftist activist organizations.

In *Seila Law LLC v. Consumer Financial Protection Bureau*,[45] the Supreme Court of the United States held that the CFPB's leadership by a single individual removable only for inefficiency, neglect, or malfeasance violated constitutional separation of powers requirements because "[t]he Constitution requires that such officials remain dependent on the President, who in turn is accountable to the people."[46] The CFPB Director is thus subject to removal by the President.

The CFPB is not subject to congressional oversight, and its funding is not determined by elected lawmakers in Congress as part of the typical congressional appropriations process. It receives its funding from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments. CFPB funding represents 12 percent of the total operating expenses of the Federal Reserve and is disbursed by the unelected Board of Governors of the Federal Reserve System.[47] This is not the case with respect to any other federal agency.

On October 19, 2022, in *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, the U.S. Court of Appeals for the Fifth Circuit held that the CFPB's "perpetual insulation from Congress's appropriations power, including the express exemption from congressional review of its funding, renders the Bureau 'no longer dependent and, as a result, no longer accountable' to Congress and, ultimately, to the people"[48] and that "[b]y abandoning its 'most complete and effectual' check on 'the overgrown prerogatives of the other branches of the government'—indeed, by enabling them in the Bureau's case—Congress ran afoul of the separation of powers embodied in the Appropriations Clause."[49] The Court further remarked that the CFPB's "capacious portfolio of authority acts 'as a mini legislature, prosecutor, and court, responsible for creating substantive rules for a wide swath of industries, prosecuting violations, and levying knee-buckling penalties against private citizens.'"[50]

On February 27, 2023, the Supreme Court granted the petition for a *writ of certiorari*.[51] The Court should issue its final decision by 2024.

The CFPB is a highly politicized, damaging, and utterly unaccountable federal agency.[52] It is unconstitutional. Congress should abolish the CFPB and reverse Dodd–Frank Section 1061, thus returning the consumer protection function of the CFPB to banking regulators[53] and the Federal Trade Commission. Provided the Supreme Court affirms the Fifth Circuit holding in *Community Financial Services Association of America*, the next conservative President should order the immediate dissolution of the agency—pull down its prior rules, regulations and guidance, return its staff to their prior agencies and its building to the General Services Administration.

Until this can be accomplished, however, Congress should:

- **Ensure that any civil penalty funds not used to recompense wronged consumers go to the Department of the Treasury.** The funds should not be retained by the Bureau to be dispensed at the pleasure of the Director—potentially to political actors. Moreover, the CFPB should not have a financial incentive to impose penalties.

- **Repeal Dodd–Frank Section 1071.** This section, which relates to small-business data collection, imposes requirements on financial institutions' lending to small firms, raises costs, and limits small businesses' access to capital.[54]

- **Require that no CFPB funds are spent on enforcement actions that are not based on a rulemaking that complies with the Administrative Procedure Act.**[55]

- **Require that respondents in administrative actions be allowed to elect whether an adjudication occurs in an administrative law court or an ordinary Article III federal court.**[56]

- **Specify the nature of "deceptive, unfair, and abusive" practices to define the scope of the CFPB mission more precisely.**

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FEDERAL COMMUNICATIONS COMMISSION

Brendan Carr

MISSION STATEMENT

The FCC should promote freedom of speech, unleash economic opportunity, ensure that every American has a fair shot at next-generation connectivity, and enable the private sector to create good-paying jobs through pro-growth reforms that support a diversity of viewpoints, ensure secure and competitive communications networks, modernize outdated infrastructure rules, and represent good stewardship of taxpayer dollars.

OVERVIEW AND BACKGROUND

The FCC is an independent regulatory agency that has jurisdiction over interstate and international communications by radio, television, wire, satellite, and cable.[1] Five Commissioners are appointed by the President and confirmed by the Senate for fixed five-year terms.[2] The FCC does not have any other presidentially appointed, Senate-confirmed officials. Ordinarily, the five-member FCC is divided politically three to two with a majority of Commissioners from the same political party as the President. The Commissioners' terms are staggered so that every year at the end of June, one Commissioner's term expires.[3] However, a Commissioner can continue to serve until the end of the next session of Congress (or up to 1.5 years beyond the expiration of the term) if no replacement is confirmed after his or her term ends.[4]

By law, only a bare majority of Commissioners can be from the same political party (no more than three when there are five members).[5] By tradition, the Chairperson resigns when a new President of a different political party is sworn

into office—though this is not required by law. By resigning, the exiting Commissioner enables the President to nominate someone from his own political party to the FCC, and this typically shifts the political balance on the FCC toward the President's political party. The President generally designates one of the existing Commissioners of the President's same political party as Chairperson—either on an acting or a permanent basis—on or shortly after Inauguration Day.

Under a tradition that dates back a few decades, when a relevant vacancy arises, the President allows the leader of the opposite political party in the Senate to select the person who will serve in the minority Commissioner role. The President then formally nominates the person identified by Senate leadership. This also is not required by law.

As specified in the Communications Act of 1934, the FCC's Chairperson serves as the agency's CEO and is empowered with significant authority that is not shared with other Commissioners.[6] For instance, the Chairperson sets the FCC's agenda, decides what matters the agency will vote on and when, and has authority to organize and coordinate the FCC's work.[7] There is no separate Senate confirmation process for the position of FCC Chairperson; the President designates one of the Commissioners to serve as Chairperson through a short one-sentence or two-sentence letter.[8] There are no limits on the number of terms that a person can serve as an FCC Commissioner, though Commissioners need to be nominated and confirmed for each five-year term.

FCC Budget and Structure. In recent years, the FCC has employed between 1,300 and 1,500 people.[9] The FCC's fiscal year 2023 budget request is for approximately $390.2 million.[10] While Congress appropriates funds for the FCC, the agency's budget is offset by what are known as regulatory fees—fees the FCC collects from the licensees and other entities that it regulates and uses to offset its budget request. The FCC also raises revenue for the government by auctioning spectrum licenses. In fact, the FCC has generated more than $200 billion for the U.S. Treasury through spectrum auctions.[11]

The FCC is organized into a series of bureaus and offices based on function. These include an Office of General Counsel, Office of Inspector General, Office of Legislative Affairs, Media Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, Enforcement Bureau, and more.[12]

High-Profile FCC Matters. The FCC addresses a number of important matters. For instance, Section 230 is codified in the Communications Act,[13] and the FCC has authority to interpret that law and thus provide courts with guidance about the proper application of the statutory language.[14] The FCC has addressed "net neutrality" rules and the regulatory framework that should apply to broadband offerings. Any merger that involves a wireless company, broadcaster, or similar entity that holds an FCC license must obtain FCC approval (assuming that the merger will involve the transfer of the FCC license).

The FCC has facilitated the transition from 3G to 4G and now 5G offerings in two ways. First, it has freed spectrum—the airwaves needed to deliver wireless services. Second, it has preempted state and local siting and permitting laws that could otherwise slow down the buildout of next-generation infrastructure. One of the FCC's great success stories from 2017 to 2020 was securing U.S. leadership in 5G.

The FCC also administers an approximately roughly $9 billion-a-year program called the Universal Service Fund (USF), which has been funded by a line-item charge that traditional telephone companies add to consumers' monthly bills. Expenditures from this fund subsidize rural broadband networks and low-income programs as well as connections for schools, libraries, and rural health care facilities. Through various COVID-era laws, Congress has also provided the FCC with a one-time $24 billion appropriation for various low-income initiatives.

POLICY PRIORITIES

The FCC needs to change course and bring new urgency to achieving four main goals:

- Reining in Big Tech,
- Promoting national security,
- Unleashing economic prosperity, and
- Ensuring FCC accountability and good governance.[15]

Reining in Big Tech. The FCC has an important role to play in addressing the threats to individual liberty posed by corporations that are abusing dominant positions in the market. Nowhere is that clearer than when it comes to Big Tech and its attempts to drive diverse political viewpoints from the digital town square.

Today, a handful of corporations can shape everything from the information we consume to the places we shop. These corporate behemoths are not merely exercising market power; they are abusing dominant positions. They are not simply prevailing in the free market; they are taking advantage of a landscape that has been skewed—in many cases by the government—to favor their business models over those of their competitors. It is hard to imagine another industry in which a greater gap exists between power and accountability. That is why a new Administration should support FCC action on several fronts. Specifically, the FCC should:

- **Eliminate immunities that courts added to Section 230.** The FCC should issue an order that interprets Section 230 in a way that eliminates the expansive, non-textual immunities that courts have read into the statute.

As one of the FCC's previous General Counsels noted, the FCC has authority to take this action because Section 230 is codified in the Communications Act.[16] The FCC's Section 230 reforms should track the positions outlined in a July 2020 Petition for Rulemaking filed at the FCC near the end of the Trump Administration.[17] Any new presidential Administration should consider filing a similar or new petition.

As Justice Clarence Thomas has made clear, courts have construed Section 230 broadly to confer on some of the world's largest companies a sweeping immunity that is found nowhere in the text of the statute.[18] They have done so in a way that nullifies the limits Congress placed on the types of actions that Internet companies can take while continuing to benefit from Section 230. One way to start correcting this error is for the FCC to remind courts how the various portions of Section 230 operate.

At the outset, the FCC can clarify that Section 230(c)(1) does not apply broadly to every decision that a platform makes. Rather, its protections apply only when a platform does not remove information provided by someone else. In contrast, the FCC should clarify that the more limited Section 230(c)(2) protections apply to any covered platform's decision to restrict access to material provided by someone else. Combined, these actions will appropriately limit the number of cases in which a platform can censor with the benefit of Section 230's protections. Such clarifications might also include drawing out the traditional legal distinction between distributor and publisher liability; Section 230 did not do away with the former, nor does it collapse into the latter.

- **Impose transparency rules on Big Tech.** Today, Big Tech offers a black box. After Google manipulates search results, a small business can see its web traffic drop precipitously overnight for no apparent reason, potentially flipping its outlook from black to red. On Facebook, social media posts are left up or taken down, accounts suspended or permanently banned, without any apparent consistency. Out of the blue, YouTube can demonetize individuals who have risked their capital and invested their labor to build online businesses.

At present, the FCC requires broadband providers to comply with a transparency rule that can provide a good baseline for Big Tech. Under the FCC's rule, broadband providers must provide detailed disclosures about practices that would shape Internet traffic—from blocking to prioritizing or discriminating against content. The FCC could take a similar approach to

Big Tech, and it should look to Section 230 and the Consolidated Reporting Act as potential sources of authority.[19] In acting, the FCC could require these platforms to provide greater specificity regarding their terms of service, and it could hold them accountable by prohibiting actions that are inconsistent with those plain and particular terms. Within this framework, Big Tech should be required to offer a transparent appeals process that allows for the challenging of pretextual takedowns or other actions that violate clear rules of the road.

- **Support legislation that scraps Section 230's current approach.** The FCC should work with Congress on more fundamental Section 230 reforms that go beyond interpreting its current terms. Congress should do so by ensuring that Internet companies no longer have carte blanche to censor protected speech while maintaining their Section 230 protections. As part of those reforms, the FCC should work with Congress to ensure that antidiscrimination provisions are applied to Big Tech—including "back-end" companies that provide hosting services and DDoS protection. Reforms that prohibit discrimination against core political viewpoints are one way to do this and would track the approach taken in a social media law passed in Texas, which was upheld on appeal in late 2022 by the U.S. Court of Appeals for the Fifth Circuit.[20]

  In all of this, Congress can make certain points clear. It could focus legislation on dominant, general-use platforms rather than specialized ones. This could include excluding comment sections in online publications, specialized message boards, or communities within larger platforms that self-moderate. Similarly, Congress could legislate in a way that does not require any platform to host illegal content; child pornography; terrorist speech; and indecent, profane, or similar categories of speech that Congress has previously carved out.

- **Support efforts to empower consumers.** The FCC and Congress should work together to formulate rules that empower consumers. Section 230 itself codifies "user control" as an express policy goal and encourages Internet platforms to provide tools that will "empower" users to engage in their own content moderation. As Congress takes up reforms, it should therefore be mindful of how we can return to Internet users the power to control their online experiences. One idea is to empower consumers to choose their own content filters and fact checkers, if any. The FCC should also work with Congress to ensure stronger protections against young children accessing social media sites despite age restrictions that generally prohibit their use of these sites.

It should be noted at this point that the views expressed here are not shared uniformly by all conservatives. There are some, including contributors to this chapter, who do not think that the FCC or Congress should act in a way that regulates the content-moderation decisions of private platforms. One of the main arguments that this group offers is that doing so would intrude—unlawfully in their view—on the First Amendment rights of corporations to exclude content from their private platforms.

- **Require that Big Tech begin to contribute a fair share.** Big Tech has avoided accountability in several additional ways as well. One of them concerns the FCC's roughly $9 billion Universal Service Fund. This initiative provides the support necessary to subsidize the agency's affordable Internet and rural connectivity programs. The FCC obtains this funding through a line-item charge that carriers add to consumers' monthly bills for traditional telecommunications service.

  While Big Tech derives tremendous value from the federal government's universal service investments—using those federally supported networks to deliver their products and realize significant profits—these large corporations have avoided paying a fair share into the program. On top of that, the FCC's current funding mechanism has been on an unsustainable path.[21] By requiring traditional telephone customers to contribute to a fund that is being used increasingly to support broadband networks, the FCC's current approach is the regulatory equivalent of taxing horseshoes to pay for highways. To put the FCC's universal service program on a stable footing, Congress should require Big Tech companies to start contributing an appropriate amount.

  Conservatives are not unanimous in agreeing that the FCC should expand the USF contribution base. Instead, some argue that Congress should revisit the program's entire funding structure and determine whether to continue subsidizing the provision of service. Future funding decisions, the argument goes, should be made by Congress through the normal appropriation process through which the USF program can compete for funding with other national initiatives. These decisions should be made with an eye to right-sizing the federal government's existing broadband initiatives in light of both technological advances and the recent influx of billions of dollars in new appropriations that can be used to support efforts to end the digital divide.

Protecting America's National Security. During the Trump Administration, the FCC ushered in a new and appropriately strong approach to the national

security threats posed by the Chinese Communist Party (CCP). During that time, the FCC eliminated federal subsidies for telecommunications equipment from Huawei and ZTE, thereby greatly reducing the chances of that equipment finding a way into our nation's communications networks. The FCC also stood up a program to rip and replace insecure network gear to ensure that it did not remain a threat lurking inside our systems. The FCC revoked or denied the licenses of carriers like China Mobile, China Telecom, and China Unicom, which presented unacceptable national security risks. There are, however, additional strong actions that the FCC can and should take to address the CCP's malign campaign. Specifically:

- **Address TikTok's threat to U.S. national security.** As law enforcement officials have made clear, TikTok poses a serious and unacceptable risk to America's national security.[22] It also provides Beijing with an opportunity to run a foreign influence campaign by determining the news and information that the app feeds to millions of Americans. As of this writing, the Biden Administration's Treasury Department has not announced a final decision concerning its long-pending review of TikTok. If that inaction persists, or if the Administration allows TikTok to continue to operate in the U.S., a new Administration should ban the application on national security grounds.

- **Expand the FCC's Covered List.** The FCC maintains a list of communications equipment and services that pose an unacceptable risk to the national security of the United States. It is known as the Covered List.[23] Huawei is one of the companies on the Covered List, and its inclusion means that the FCC will no longer review or approve new applications from Huawei. Without FCC approval, new Huawei gear cannot be lawfully sold or used in the U.S. However, the FCC must do a better job of ensuring that its Covered List stays up to date and accounts for changes in corporate names and forms. Therefore, a new Administration should create a more regular and timely process for reviewing entities with ties to the CCP's surveillance state.

- **End the unregulated end run.** As noted above, China Telecom and similar entities have been banned from operating in the U.S. in a manner that would require an FCC license or authorization because of the national security risks that those entities pose. However, many of these same entities are still operating in the U.S. and offering services very similar to the ones that they are prohibited from providing. China Telecom, for instance, continues to provide services to data centers by offering the services on a private or "unregulated" basis. A new Administration should work with the FCC to close this loophole. One way to do so would be for the FCC to prohibit any regulated carrier from interconnecting with an insecure provider.

- **Publish a foreign adversary transparency list.** As part of the FCC's ongoing work to secure our networks from entities that would do the bidding of our foreign adversaries, the FCC should do more to shine the light of transparency on the scope of the problem. To this end, the FCC should compile and publish a list of all entities that hold FCC authorizations, licenses, or other grants of authority with more than 10 percent ownership by foreign adversarial governments, including the governments of China, Russia, Iran, Syria, or North Korea. A bipartisan bill that would require the FCC to publish this type of list has been introduced in the House of Representatives by Representatives Elise Stefanik (R–NY), Ro Khanna (D–CA), and Mike Gallagher (R–WI).[24]

- **Fully fund the federal "rip and replace" program.** In 2019, Congress established a $1.9 billion Secure and Trusted Communications Networks Reimbursement Program (known colloquially as the "rip and replace" program) to reimburse communications providers for the reasonable expenses they would incur to remove, replace, and dispose of insecure Huawei and ZTE gear. However, $1.9 billion is about $3 billion short of the total amount of funding needed to complete the rip and replace process. A new Administration should ensure that the program is fully funded and should look first at repurposing and applying unused COVID-era emergency funds for this purpose.

- **Launch a Clean Standards Initiative.** During the Trump Administration, the U.S. government launched a worldwide Clean Networks program.[25] As a result of this initiative, many of the U.S. government's allies started the process of ending their relationships with Huawei. It is time for an Administration to build and expand on this groundbreaking work by taking a similar approach to the standard-setting process. Right now, the CCP is seeking to extend its influence by exerting control over the development of standards in a variety of areas, including technology and telecommunications. It is vital that the United States meet this threat with a comprehensive clean standards initiative.

- **Stop aiding the CCP's authoritarian approach to artificial intelligence.** The CCP has set itself a goal of becoming the global leader in artificial intelligence (AI) by 2030. Beijing is bent on using this technology to exert authoritarian control domestically and export its authoritarian governance model overseas. U.S. businesses are aiding Beijing in this effort—often unwittingly—by feeding, training, and improving the AI datasets of companies that are beholden to the CCP. One way that U.S. companies

are doing this is by giving Beijing access to their high-powered cloud computing services. Therefore, it is time for an Administration to put in place a comprehensive plan that aims to stop U.S. entities from directly or indirectly contributing to China's malign AI goals.

Unleashing Economic Prosperity. The FCC needs to advance a pro-growth agenda that gives every American a fair shot at next-generation connectivity. This is vital for economic opportunity and prosperous communities. The current Administration has appropriated a lot of money for broadband infrastructure projects, but it has failed to pair that spending with reforms that free more airwaves for wireless connectivity or streamline the permitting processes for broadband builds. That failure is holding back America's hardworking telecommunications crews and leaving Americans stuck waiting on the wrong side of the digital divide. It is time for a return to the successful spectrum and infrastructure policies that prevailed during the Trump Administration—policies that enabled the U.S. to lead the world in 5G.

- **Refill America's spectrum pipeline.** From 2017 through 2020, the FCC took unprecedented steps to free the airwaves needed to power 5G and other next-generation wireless services. This work not only helped to secure America's wireless leadership and bolster competition, but also enabled the private sector to create jobs and grow the economy. Recently, the FCC has failed to match the pace and cadence of those spectrum actions. Therefore, the FCC and a new Administration should work together to develop a national spectrum strategy that both identifies the specific airwaves that the FCC can free for commercial wireless services and sets an aggressive timeline for agency action.

- **Facilitate coordination on spectrum issues.** Wireless services now play a central role in advancing America's economic and national security interests. Over the past few years, this dynamic has led to an increasing number of headline-level disputes between the commercial wireless sector and federal agencies. These disputes are often framed in zero-sum terms as commercial wireless and federal agency stakeholders argue over the appropriate types and amount of airwaves that the government should allocate for various purposes. On the one hand, America's global economic leadership depends on its ability to free spectrum that will power the U.S. commercial wireless industry. On the other hand, we must ensure that America's national security and other federal agencies have access to the spectrum resources that they need to carry out their vital missions.

It is clear that the current process is not delivering optimal outcomes. In December 2021 and January 2022, for instance, the lack of interagency coordination and communication about mid-band 5G spectrum allocation between the FCC and the Federal Aviation Authority led to significant challenges for the U.S. aviation industry. Over the past two years, the FCC has failed to move spectrum into the commercial marketplace at the same pace and cadence that it did in the recent past. Creating better mechanisms to improve communication and cooperation between different federal agencies could enable a more effective and coordinated U.S. government telecommunications strategy. The White House should work with Congress to establish a spectrum coordination process that will work for both commercial and federal users.

- **Modernize infrastructure rules.** By 2016, the construction of new cell sites—the building blocks for 5G—had essentially flatlined in America. Because of outdated permitting rules, it cost too much and took too long to build wireless infrastructure, so the FCC went to work. The agency updated the environmental and historic preservation rules that needlessly drove up the cost and slowed down the timeline for adding small cells. The FCC put in place guardrails to address outlier fees and delays imposed at the state and local levels on those same small-cell projects. It modernized the permitting process in several additional ways as well.

  Those FCC reforms delivered results. They allowed America's private sector to bring thousands of families across the digital divide and to keep Americans connected during the pandemic. In fact, infrastructure builds accelerated at a record pace after those reforms. In 2019, for instance, U.S. providers built over 46,000 new cell sites—a sixty-fivefold increase over 2016 levels.

  The FCC has not engaged in any similar infrastructure reforms in recent years, and there is much more that needs to be done. For instance, the FCC's prior reforms focused on streamlining the rules for small wireless facilities. The FCC should now explore similar action for the deployment of other wired infrastructure by imposing limits on the fees that local and state governments can charge for reviewing those wireline applications and time restrictions on the government's decision-making process.

  The next Administration should also work to address the delays that continue to persist when it comes to building Internet infrastructure on federal lands. This is an area where the FCC itself has very little jurisdiction,

so a new Administration should redouble efforts to require timely reviews and final actions by agencies with jurisdiction over federal lands, including the Bureau of Land Management and the U.S. Forest Service.

- **Advance America's space leadership.** One of the most significant technological developments of the past few years has been the emergence of a new generation of low-earth orbit satellites like StarLink and Kuiper. This technology can beam a reliable, high-speed Internet signal to nearly any part of the globe at a fraction of the cost of other technologies. This has the potential to significantly accelerate efforts to end the digital divide and disrupt the federal regulatory and subsidy regime that applies to communications networks. The FCC should expedite its work to support this new technology by acting more quickly in its review and approval of applications to launch new satellites. Otherwise, the U.S. risks ceding space leadership to entities based in countries with more friendly regulatory environments.

Holding Government Accountable. Federal technology and telecommunications programs have been plagued by a troubling lack of accountability and good governance. They would benefit from stronger oversight and a fresh look at eliminating outdated regulations that are doing more harm than good.

- **End wasteful broadband spending policies.** Many of the broadband spending policies being pursued by the current Administration are poised to waste taxpayer money while leaving rural communities and unconnected Americans behind. At the same time, the dramatic recent increases in funding through the American Rescue Plan Act (ARPA) and the Infrastructure Investment and Jobs Act mean that the federal government has more than enough resources to meet its broadband connectivity goals. Congress should therefore hold the agencies accountable so that taxpayer money is used effectively to promote broadband connectivity across the nation.

  To that end, the next Administration should instruct the various departments and agencies that are administering broadband infrastructure funds to direct those resources to communities without adequate Internet infrastructure instead of to places that already enjoy broadband connectivity. Take, for example, the final rules that the Treasury Department adopted in 2022 that govern the expenditure of $350 billion in ARPA funds. Rather than directing those dollars to the rural and other communities that have no Internet infrastructure, the current

Administration gave the green light for recipients to spend those funds to overbuild existing high-speed networks in communities that already have multiple broadband providers. A new Administration should eliminate government-funded overbuilding of existing networks.

- **Adopt a national coordinating strategy.** Hundreds of billions of infrastructure dollars have been appropriated by Congress or budgeted by agencies over the past couple of years that can be used to end the digital divide. Yet, according to the U.S. Government Accountability Office, "U.S. broadband efforts are not guided by a national strategy"; instead, "[f]ederal broadband efforts are fragmented and overlapping, with more than 100 programs administered by 15 agencies," risking overbuilding as well as wasteful duplication.[26] Many of these programs remain plagued by inefficiency, further contributing to waste of limited taxpayer dollars.

  Moreover, the federal government is failing to put appropriate guardrails in place to govern the expenditure of billions in broadband funds. This is the regulatory equivalent of turning the spigot on full blast and then walking away from the hose. There is a worrisome lack of adequate tracking, measurement, and accountability standards governing all of this broadband spending. As a result, we are likely to see headline levels of waste, fraud, and abuse.

  A new Administration needs to bring fresh oversight to this spending and put a national strategy in place to ensure that the federal government adopts a coordinated approach to its various broadband initiatives. Similarly, the next Administration should ask the FCC to launch a review of its existing broadband programs, including the different components of the USF, with the goal of avoiding duplication, improving efficiency of existing programs, and saving taxpayer money.

- **Correct the FCC's regulatory trajectory and encourage competition to improve connectivity.** The FCC is a New Deal–era agency. Its history of regulation tends to reflect the view that the federal government should impose heavy-handed regulation rather than relying on competition and market forces to produce optimal outcomes. President Franklin D. Roosevelt recommended that Congress create the FCC in February 1934 for the purposes of establishing "a single Government agency charged with broad authority" over the field of communications.[27] Congress subsequently established the FCC through the Communications Act of 1934. Congress has passed a number of additional statutes—some broad, some

narrow—that pertain to the FCC's authority, including most significantly the Telecommunications Act of 1996,[28] which opened up markets for greater competition and largely deregulated industry segments.

Technological change in the connectivity sector is occurring rapidly. We are now seeing an unprecedented level of convergence, innovation, and competition in the market for connectivity. On the one hand, traditional cable providers like Charter are now offering mobile wireless services to consumers in direct competition with traditional wireless companies like Verizon. On the other hand, a new generation of low-earth orbit satellite services like StarLink and Amazon's Project Kuiper stand to offer high-speed home broadband in competition with legacy providers. Furthermore, broadcasters are offering high-speed downloads directly to consumers over spectrum that previously provided only TV service.

These rapidly evolving market conditions counsel in favor of eliminating many of the heavy-handed FCC regulations that were adopted in an era when every technology operated in a silo. These include many of the FCC's media ownership rules, which can have the effect of restricting investment and competition because those regulations assume a far more limited set of competitors for advertising dollars than exist today, as well as its universal service requirements.

Ultimately, FCC reliance on competition and innovation is vital if the agency is to deliver optimal outcomes for the American public. The FCC should engage in a serious top-to-bottom review of its regulations and take steps to rescind any that are overly cumbersome or outdated. The Commission should focus its efforts on creating a market-friendly regulatory environment that fosters innovation and competition from a wide range of actors, including cable-based, broadband-based, and satellite-based Internet providers.

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume. While this chapter identifies certain issues on which the contributors did not all agree, the author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

ENDNOTES

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2. 47 U.S.C. § 154, https://www.law.cornell.edu/uscode/text/47/154 (accessed January 23, 2023).
3. Ibid.
4. 47 U.S.C. § 154(c).
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6. 47 U.S.C. § 155(a), https://www.law.cornell.edu/uscode/text/47/155 (accessed January 23, 2023).
7. Ibid.
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15. This chapter does not purport to set forth a comprehensive agenda for the FCC. Rather, it focuses on a selected handful of issue areas that may quickly rise to the attention of a new Administration. Similarly, not every contributor to this chapter agrees with every policy idea included here; this document attempts to reflect a range of views and perspectives.
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17. U.S. Department of Commerce, National Telecommunications and Information Administration, "NTIA Petition for Rulemaking to Clarify Provisions of Section 230 of the Communications Act," July 27, 2020, https://ntia.gov/fcc-filing/ntia-petition-rulemaking-clarify-provisions-section-230-communications-act (accessed January 23, 2023).
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29

FEDERAL ELECTION COMMISSION

Hans A. von Spakovsky

MISSION/OVERVIEW

The Federal Election Commission (FEC) is an independent federal agency that began operations in 1975 to enforce the Federal Election Campaign Act (FECA) passed by Congress in 1971 and amended in 1974.[1] FECA governs the raising and spending of funds in all federal campaigns for Congress and the presidency. The FEC has no authority over the administration of federal elections, which is performed by state governments.

While the FEC has exclusive civil enforcement authority over FECA,[2] the U.S. Justice Department has criminal enforcement authority, which is defined as a knowing and willful violation of the law.[3] Because the FEC is an independent agency and not a division or office directly within the executive branch, the authority of the President over the actions of the FEC is extremely limited.

As former FEC Commissioner Bradley Smith has said, the FEC's "[r]egulation of campaign finance deeply implicates First Amendment principles of free speech and association."[4] The FEC regulates in one of the most sensitive areas of the Bill of Rights: political speech and political activity by citizens, candidates, political parties, and the voluntary membership organizations that represent Americans who share common views on a huge range of important and vital public policy issues.

NEEDED REFORMS

Nomination Authority. The President's most significant power is the appointment of the six commissioners who govern the FEC, subject to confirmation by the U.S. Senate. Commissioners may only serve a single term of six years but

because they stay in office until a new commissioner has been confirmed, many commissioners continue to serve past their terms.[5] Currently, the longest serving commissioner still at the FEC is Ellen Weintraub (D), whose regular term expired in 2007.

Under FECA, no more than three commissioners may be from the same party.[6] While that means that a commissioner could be an independent or a member of the Libertarian or Green Parties, in practice, this has meant that the FEC has always had three Democrat and three Republican commissioners.[7]

There is a long-held political tradition since the FEC's founding that when a commission slot held by a member of the opposition political party opens up, the President consults with, and nominates, the chosen nominee of the opposition party's leader in the Senate. In exchange, the Senate party leader and his caucus agree to approve the President's nominee to fill an empty position for the President's political party. It has also been customary to advance the two nominees of the differing political parties at the same time; this bipartisan pairing has historically permitted easy confirmation of both parties' selectees.

Thus, by convention, a Republican President will nominate a Republican and a Democrat for two open commission slots, including the choice of the Democrat Senate leader for his party's seat. In turn, the senator will direct his party to vote to confirm both nominees. In the almost 50-year history of the FEC, this tradition has only been broken once—when Senate Majority Leader Harry Reid refused to approve one of George W. Bush's nominees (Hans von Spakovsky) for a Republican commission slot.[8]

In 2025, when a new President assumes office, the term of five of the current FEC commissioners will have either expired or be about to expire:[9]

- Shana M. Broussard (D)—April 30, 2023
- Sean J. Cooksey (R)—April 30, 2021
- Allen Dickerson (R)—April 30, 2025
- James Trainor, III (R)—April 30,2023
- Ellen L. Weintraub (D)—April 30, 2007

During their terms, the three Republican commissioners have demonstrated with their votes and their public statements that they believe the FEC should not overregulate political activity and act beyond its statutory authority, construe ambiguous and confusing provisions against candidates and the public instead of the government, and infringe on protected First Amendment activity.

- **The President assuming office in 2025 must ensure, if the three Republican commissioners do not wish to remain on the FEC past their terms, that nominees for these positions share the views of those commissioners.**

- **Also, to the extent that the President has the ability to negotiate with the Democratic Party leader in the Senate, he should try to temper any choice of the opposition party to ensure that this individual does not have extreme views on aggressive overenforcement that would severely restrict political speech and protected party, campaign, and associational activities.**

U.S. Department of Justice/FEC-Related Activities. The President does have control of the Department of Justice (DOJ). Thus, he has authority as President, primarily through his choice of attorney general and other political appointees, to direct the prosecutorial functions of the DOJ regarding criminal enforcement of FECA. Such investigations and prosecutions are carried out by the Public Integrity Section of the Criminal Division, with the assistance, coordination, and help of the Offices of U.S. Attorneys in whatever state an alleged violation occurs.

- **The President must ensure that the DOJ, just like the FEC, is directed to only prosecute clear violations of FECA.** The department must not construe ambiguous provisions against the public instead of the government or apply FECA in a way that infringes on protected First Amendment activity.

It should be but is not always obvious to overzealous government prosecutors that if a federal law is confusing, it would be unjust to prosecute individuals who are unable to determine if they are violating the law.

- **The President should direct the DOJ and the attorney general not to prosecute individuals under an interpretation of the law with which the FEC—the expert agency designated by Congress to enforce the law civilly and issue regulations establishing the standards under which the law is applied—does not agree.**

- **In making prosecution decisions, DOJ should be instructed to consult and consider all official actions by the FEC that interpret the law including prior enforcement actions, regulatory pronouncements, and advisory opinions, just as private practitioners, the public, and political actors must do.**

It is fundamentally unfair for the DOJ to prosecute an individual for supposedly violating the law when the FEC has previously determined that a similarly situated individual has not violated the law. Furthermore, this rule should apply even when there is a tied or three-to-three vote by the FEC commissioners whether in an enforcement action or an advisory opinion since under the statute, the FEC cannot take any action unless there are four affirmative votes.

Again, it seems obvious that if the commissioners designated by Congress to interpret the law are unable to determine what the law requires, then it is unfair to prosecute a citizen for violating that law. The DOJ should not engage in criminal prosecutions that stretch legal theories and defy FEC interpretations and regulations.

Another issue directly related to what has often been a contentious relationship between the FEC and the DOJ is the conduct of litigation. The vast majority of federal agencies are defended by the DOJ, which also represents them when the agency is pursuing litigation as a plaintiff.

The FEC, however, is one of the few federal agencies with independent litigating authority.[10] The FEC's lawyers represent the agency in federal court up through the federal courts of appeal. If a case reaches the U.S. Supreme Court, then the Office of the Solicitor General of the Justice Department represents the FEC.

In recent years, the FEC has failed to defend itself against litigation filed by political allies of certain Democrat commissioners. It takes four votes to authorize the general counsel of the FEC to defend a lawsuit filed against the agency, and those commissioners have refused to provide that fourth vote, so "the public was treated to the scandalous spectacle of the Commission—an independent agency of the United States government—defaulting in litigation before federal courts."[11]

These cases involved enforcement matters in which the commissioners disagreed on whether a violation of the law had occurred. Accordingly, the final votes of the commissioners did not approve moving forward with enforcement because there were not four affirmative votes that a violation of the law occurred. When private plaintiffs then sued the FEC for failing to take action, Democrat commissioners refused to authorize the defense of the FEC in litigation as a way of circumventing the prior final action of the FEC and the FECA four-vote requirement to authorize an enforcement action. Such defaults in litigation are unacceptable.

- **The President should direct the attorney general to defend the FEC in all litigation when there is a failure of the commissioners to authorize the general counsel of the agency to defend it.** No legislation would be needed to accomplish this; the DOJ has the general authority to defend the government and its agencies in all litigation.

- **As a legislative matter and given this abuse, the President should seriously consider recommending that Congress amend FECA to remove the agency's independent litigating authority and rely on the Department of Justice to handle all litigation involving the FEC.**

There are also multiple instances of existing statutory provisions of FECA and the accompanying FEC regulations having been found unlawful or unconstitutional by federal court decisions, yet those statutory provisions remain in the U.S. Code and the implementing regulations remain in the Code of Federal Regulations.[12] In such instances, those regulated by the law, from candidates to the public, have no way of knowing (without engaging in extensive legal research) whether particular statutory provisions and regulations are still applicable to their actions in the political arena.

- **The President should request that the commissioners on the FEC prepare such guidance.**

- **In the event that the FEC fails to act, the President should direct the attorney general to prepare a guidance document from the Department of Justice for the public that outlines all of the FECA statutory provisions and FEC regulations that have been changed, amended, or voided by specific court decisions.**

Legislative Changes. While a President's ability to make any changes at an independent agency like the FEC is limited,[13] the President has the ability to make legislative recommendations to Congress. One of the most obvious changes that is needed is to end the current practice of allowing commissioners to remain as serving commissioners long after their term has expired, defying the clear intent of Congress in specifying that a commissioner can only serve a single term of six years.

- **The President should prioritize nominations to the FEC once commissioners reach the end of their terms and should be assisted by legislative language either eliminating or limiting overstays to a reasonable period of time to permit the vetting, nomination, and confirmation of successors.**

- **The President should vigorously oppose all efforts, as proposed, for example, in Section 6002 of the "For the People Act of 2021,"[14] to change the structure of the FEC to reduce the number of commissioners from six to five or another odd number.** The current requirement of four votes to authorize an enforcement action, provide

an advisory opinion, or issue regulations, ensures that there is bipartisan agreement before any action is taken and protects against the FEC being used as a political weapon.

With only five commissioners, three members of the same political party could control the enforcement process of the agency, raising the potential of a powerful federal agency enforcing the law on a partisan basis against the members of the opposition political party. Efforts to impose a "nonpartisan" or so-called "independent" chair are impractical; the chair will inevitably be aligned with his or her appointing party, at least as a matter of perception.

There are numerous other changes that should be considered in FECA and the FEC's regulations. The overly restrictive limits on the ability of party committees to coordinate with their candidates, for example, violates associational rights and unjustifiably interferes with the very purpose of political parties: to elect their candidates.

- **Raise contribution limits and index reporting requirements to inflation.** Contribution limits should generally be much higher, as they hamstring candidates and parties while serving no practical anticorruption purpose. And a wide range of reporting requirements have not been indexed to inflation, clogging the public record and the FEC's internal processes with small-dollar information of little use to the public.

CONCLUSION

When taking any action related to the FEC, the President should keep in mind that, as former FEC Chairman Bradley Smith says, the "greater problem at the FEC has been overenforcement," not underenforcement as some critics falsely allege.[15] As he correctly concludes, the FEC's enforcement efforts "place a substantial burden on small committees and campaigns, and are having a chilling effect on some political speech...squeezing the life out of low level, volunteer political activity."[16]

Commissioners have a duty to enforce FECA in a fair, nonpartisan, objective manner. But they must do so in a way that protects the First Amendment rights of the public, political parties, and candidates to fully participate in the political process. The President has the same duty to ensure that the Department of Justice enforces the law in a similar manner.

ENDNOTES

1. 52 U.S.C. § 30101 *et seq*.
2. 52 U.S.C. § 30106(b)(1).
3. 52 U.S.C. § 30109(c) and (d).
4. Bradley A. Smith and Stephen M. Hoersting, "A Toothless Anaconda: Innovation, Impotence and Overenforcement at the Federal Election Commission," 1 *Election Law Journal* 2 (2002), p. 162.
5. 52 U.S.C. § 30106(a)(2).
6. 52 U.S.C. § 30106(a)(1).
7. Former Commissioner Steven Walther (2006–2022) was listed nominally as an independent but he was recommended to President George W. Bush for nomination by former Nevada Sen. Harry Reid (D) and almost always voted in line with the Democrat commissioners on the FEC.
8. Hans von Spakovsky served as a commissioner from 2006 to 2007 in a recess appointment. While no other nominee has been rejected by the Senate, the tradition of bipartisan voice vote confirmation has largely ended. Two Republican nominees—Allen Dickerson and Sean Cooksey—were confirmed on party-line votes in 2020. And one Democrat—Dara Lindenbaum—was confirmed with the support of only six Republican senators in 2022.
9. The term of the 6th Commissioner, Dara Lindenbaum (D), will expire on April 30, 2027.
10. 52 U.S.C. § 30107(a)(6).
11. "Statement of Chairman Allen J. Dickerson and Commissioners Sean J. Cooksey and James E. 'Trey' Trainor, III Regarding Concluded Enforcement Matters," Federal Election Commission (May 13, 2022), https://www.fec.gov/resources/cms-content/documents/Redacted_Statement_Regarding_Concluded_Matters_13_May_2022_Redacted.pdf.
12. See, e.g., McCutcheon v. Federal Election Commission, 572 U.S. 185 (2014).
13. It should be noted, however, that the constitutional authority of a President to, among other things, remove appointees and direct the actions of independent agencies is a hotly contested and increasingly litigated issue. *See Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010); *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183 (2020); and *Collins v. Yellen*, 141 S. Ct. 1761 (2021).
14. H.R. 1, 117th Cong. (2021–2022).
15. Bradley A. Smith and Stephen M. Hoersting, "A Toothless Anaconda: Innovation, Impotence and Overenforcement at the Federal Election Commission," 1 *Election Law Journal* 2 (2002), p. 171.
16. Id.

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FEDERAL TRADE COMMISSION

Adam Candeub

MISSION/OVERVIEW

America's antitrust laws are over a century old. In 1890, the U.S. Congress enacted the Sherman Act,[1] the first federal prohibition on trusts and restraints of trade. The Clayton Act,[2] adopted in 1914, builds upon the Sherman Act, outlawing certain practices, such as price fixing, while bringing other business combinations, such as mergers and acquisitions, under regulatory scrutiny.

The Federal Trade Commission Act (FTCA),[3] also adopted in 1914, gives the federal government legal tools to combat anticompetitive, unfair, and deceptive practices in the marketplace, empowering the Federal Trade Commission (FTC) to enforce provisions of the Sherman and Clayton Acts. The FTCA prohibits "unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce." Sections 3, 7, and 8 of the Clayton Act empower the FTC to block unlawful tying contracts, unlawful corporate mergers and acquisitions, and interlocking directorates. Under an amendment to the FTCA, the Robinson–Patman Act,[4] the FTC has authority to prohibit practices involving discriminatory pricing and product promotion. While the FTC has enforcement or administrative responsibilities under more than 70 laws, the FTCA and the Clayton Act are the focus of its regulatory energy.

FTC actions, therefore, turn on the antitrust principles and market principles it adopts. Modern approaches to antitrust stress that the objective of antitrust law is to assure a competitive economy—which in economic terms maximizes both allocative efficiency (optimal distribution of goods and services, taking into account consumer's preferences, so that prices tend toward marginal cost) and productive

efficiency (using the least amount of resources for optimal output)—and thereby maximizes consumer welfare.[5]

Recently, however, many in the conservative movement have taken a broader view of antitrust. They point out that the authors of our antitrust laws did not intend this purely economic understanding of competitive markets—and the normative assumptions that undergird it—to guide their legislation. First, these principles were only imperfectly worked out at the time the antitrust laws were passed. Second, contemporaneous statements concerning the Sherman and Clayton Acts demonstrate Congress's concern about the political and economic power of the oil and railroad trusts of the first Gilded Age, and their influence on democratic institutions and civil society. Antitrust law can combat dominant firms' baleful effects on democratic institutions such as free speech, the marketplace of ideas, shareholder control, and managerial accountability as well as collusive behavior with government.

Republican Senator John Sherman explained to Congress in support of his eponymous legislation:

> If we will not endure a king as a political power, we should not endure a king over the production, transportation, and sale of any of the necessaries of life. If we would not submit to an emperor, we should not submit to an autocrat of trade, with power to prevent competition and to fix the price of any commodity.[6]

Similarly, identifying the institutional threats that market concentration can pose, the former Republican President and future Supreme Court Justice William Howard Taft wrote at the time,

> The federal antitrust law is one of the most important statutes ever passed in this country. It was a step taken by Congress to meet what the public had found to be a growing and intolerable evil in combinations between many who had capital employed in a branch of trade, industry, or transportation, to obtain control of it, regulate prices, and make unlimited profit.

Taft saw in this economic threat broader implications for American society since "the building of great and powerful corporations which had, many of them, intervened in politics and through use of corrupt machines and bosses threatened us with a plutocracy."[7]

Others in the conservative movement have maintained for numerous decades that an economic justification is the only coherent approach to the antitrust laws. Many view the first 90 years of U.S. antitrust policy as unprincipled in its approach, often resulting in policies that, by trying to protect smaller competitors, ended up

raising prices for consumers. Judge Robert Bork in his influential book *The Antitrust Paradox* found economic justifications for previously denounced behavior including small horizontal mergers, all vertical and conglomerate mergers, vertical price maintenance and market division agreements, tying arrangements, exclusive dealings and requirements contracts, "predatory" price cutting, and price "discrimination." Bork also defended corporate "bigness" if it came about through internal growth or acceptable mergers. He also defended agreements between competitors on prices, territories, refusals to deal, and other "suppressions of rivalry" that are "ancillary" to some economic efficiency. The practical contribution of his work was to put consumer welfare at the heart of competition law.[8]

Beyond antitrust injury, we are witnessing in today's markets the use of economic power—often market and perhaps even monopoly power—to undermine democratic institutions and civil society. Practices such as Environmental, Social, and Governance (ESG) requirements on publicly traded corporations and their inclusion in business agreements, the so-called "de-banking" of industries and individuals, and the interference of large internet firms with democratic political discourse undermine liberal democracy, a truly open society, and, indeed, rule of law. Without rule of law, markets themselves will wither.[9]

Critical of the "social responsibility" agenda, Milton Friedman in his provocatively titled essay "The Social Responsibility of Business Is to Increase Its Profits" states,

> [T]here is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays in the rules of the game, which is to say, engages in open and free competition, without deception or fraud.[10]

For Friedman, market mechanisms, not political mechanisms, are the appropriate way to determine the allocation of scarce resources to alternative uses. Business managers appropriate shareholder wealth when they use corporate resources to further their personal political beliefs, even when pursuing what they consider a "socially responsible" or "moral" agenda. The business of American business is business, not ideology.

More broadly, there is less and less debate around the growth of monopoly rents throughout the U.S. economy. The current data strongly suggest that U.S. corporations are systematically earning far higher profits than they were 25 or 30 years ago. Combined with other evidence that large corporations are accounting for an increasing share of revenue and employment, it certainly appears that many large U.S. corporations are earning substantial incumbency rents, and have been doing so for at least 15 years, apart from during the depths of the Great Recession that began in 2008.

While the explanations for this shift are not clear, what is particularly disturbing is the possibility that these rents are extracted at least in part through regulatory capture—which can function as a bar to entrance for new competitors. In addition, the sheer cost of compliance with regulation favors large firms, which can more efficiently spread the cost of regulation over a larger revenue base and have the resources to invest in sophisticated government relations. The FTC must consider, therefore, the role of government itself in maintaining market concentration in areas ranging from pharmaceuticals and healthcare to avionics, banking, and real estate brokerage.

Beyond undermining small businesses and reducing their salubrious moral effect on American civil society, concentration of economic power facilitates collusion between government and private actors, undermining the rule of law. The continued emergence of evidence documenting collusion—between the Big Tech internet platforms and the Biden White House and administrative agencies—to censor criticism, scientific fact, and uncomfortable political truths demonstrates this unfortunate development.

But, there are some caveats. First, the FTC lacks the power to revisit developments in antitrust laws, which have brought an invaluable rigor to the antitrust law—matters such as analyzing vertical integration, for example. Nor should it. Second, the FTC's recent rescinding of its 2015 Policy Statement was undoubtedly ill-considered.[11] Of course, the consumer welfare standard must guide FTC action, but, in appropriate situations and with strong evidence, this standard must be expanded to include more factors than just price. Further, a similar standard of proof used to establish that a practice challenged by the Commission causes harm to competition must also apply in demonstrating the efficiencies that justify the practices.

President Harry Truman reportedly made the famous quip, "Give me a one-handed economist. All my economists say 'on the one hand...', then 'but on the other.'" When it comes to some of the more vexing issues in antitrust regulation, the conservative movement is in the same predicament. Many wish to preserve the productivity and efficiency focus of an economic-based consumer welfare standard approach to antitrust enforcements; others are more willing to look at the effects of business concentration in certain industries on innovation, the institutional resilience of our democracy, and children's development. The following discussion sets forth policy principles and initiatives on which there was agreement among the contributors to this chapter, and notes and explains where there was dissent.

NEEDED REFORMS

Should the FTC Enforce Antitrust—or Even Continue to Exist? Some conservatives think that antitrust enforcement should be invested solely in the Department of Justice (DOJ). The FTC's commissioners are not removable at will by the President, which many quite reasonably believe violates the Vesting Clause

of Article II of the Constitution; it is for this reason that conservatives have long believed in either ending law enforcement activities of independent agencies or ending their independent status. The Supreme Court ruling in *Humphrey's Executor*[12] upholding agency independence seems ripe for revisiting—and perhaps sooner than later.[13]

Others think that the post–New Deal expansion of the administrative state has had baleful effects upon our society and earnestly share the hope that it can be greatly curtailed if not eliminated—or that its authority can be returned to the states and other democratically accountable political institutions. But, until there is a return to a constitutional structure that the Founding Fathers would have recognized and a massive shrinking of the administrative state, conservatives cannot unilaterally disarm and fail to use the power of government to further a conservative agenda. As experience shows, the administrative state will grow and further its own agenda, often at odds with conservative thought, even under conservative leadership. Unless conservatives take a firm hand to the bureaucracy and marshal its power to defend a freedom-promoting agenda, nothing will stop the bureaucracy's anti–free market, leftist march.

ESG Practices as a Cover for Anticompetitive Activity and Possible Unfair Trade Practices. It has long been suspected, and is now increasingly documented, that corporate social advocacy on issues ranging from "Diversity, Equity, and Inclusion" (DEI) to the "environmental, social, and governance" (ESG) movement also serves to launder corporate reputation and perhaps obtain favorable treatment from government actors. In a recent Senate Judiciary hearing, Senator Josh Hawley asked FTC Chair Lina Khan if the FTC had conditioned merger reviews on ESG or critical race theories adopted by the firms involved. Khan responded by saying that she turned down deals when firms offered social justice policies in return for approving unlawful deals. In response to a similar question from Senator Tom Cotton, Khan responded that firms try to come to the FTC to get out of antitrust liability by offering climate, diversity, or other forms of ESG-type offerings, but that there is no ESG loophole in the antitrust laws.[14]

Her comments suggest that there is a movement of firms attempting to use both ESG and DEI as a sort of reputational laundering to avoid enforcement of potentially criminal activity. The FTC should set up an ESG/DEI collusion task force to investigate firms—particularly in private equity—to see if they are using the practice as a means to meet targets, fix prices, or reduce output.

- **Congress should investigate ESG practices as a cover for anticompetitive activity and possible unfair trade practices.**

The business of American business is business, not ideology. The privileges extended to corporations in American society come with the expectation that

they will pursue profits for shareholders, bringing about economic growth. Managers, particularly in publicly traded corporations, who use their power to advance sets of fashionable moral beliefs, such as ESG/DEI, introduce agency problems into the shareholder relationship and appropriate corporate wealth for their own benefit.

Milton Friedman recognized this problem decades ago when answering the question whether businesses have ethical or social obligations, as was mentioned above. Contrary to his detractors, Friedman did not defend "greed is good." Rather, according to Friedman, socially responsible activities conducted by a corporation distort economic freedom because shareholders do not decide how their money will be spent—increasing the possibility for fraud or management opportunism. This is especially the case in concentrated industries with market power.[15]

Managers who insert their own values into underwriting agreements, contracts for professional services, or other business transactions coopt shareholder value for their own personal utility. This is an unfair trade practice, particularly when it occurs in industries that enjoy market power and special privileges or relationships with the government.

Cancel Culture, Collusion, and Commerce. As a corollary, businesses that make general offers of service to the public forego profits by refusing to service a lawful activity, i.e., fossil fuel extraction or gun manufacturing, raising similar concerns. When banks or internet platforms refuse customers based on their political or social views (as distinguished from religious views), they forgo profits. While such decisions are often justified on public relations, marketing, or branding grounds—and normally such decisions, reflecting business judgment, should and would receive deference, this presumption is harder to make in a highly partisan, ideologically divided America. This type of behavior can rise to the level of an unfair trade practice when the business is (1) publicly traded; (2) highly regulated; (3) enjoys legal privileges; (4) enjoys market power; and (5) appears to engage in its own political or social agenda that is unrelated to any conceivable branding concerns. The government, as guided by democratically passed laws, already regulates activities such as fossil fuel extraction and gun manufacturing. Businesses, particularly those that enjoy certain government privileges or relationships and/or market power, should not replace democratic decision-making with their own judgment on controversial matters.

A related concern is the degree to which concentration of industries, particularly in pharmaceuticals, health care, and the internet, encourages government collusion that undermines democratic institutions. Collusion can be explicit, in the case for example of government working with social media companies to censor politically harmful news, or more implicit—for example, regulatory requirements so burdensome that they deter market entrance by smaller entities without the resources to bear them.

Protecting Children Online. The FTC has long protected children in a variety of different contexts. Internet platforms profit from obtaining information from children without parents' knowledge or consent—and social media's effect on the well-being of American children is well-documented. Around 2012, American teens experienced a dramatic decline in wellness. Depression, self-harm, suicide attempts, and suicide all increased sharply among U.S. adolescents between 2011 and 2019,[16] with similar trends worldwide.[17] The increase occurred at the same time that social media use moved from rare to ubiquitous among teens,[18] making social media a prime suspect for the sudden rise in mental health issues among teens. In addition, excessive social media use is strongly linked to mental health issues among individuals. Several studies strongly support the notion that social media use is a cause, not just a correlation, of subjective well-being and poor mental health.[19]

Social media and other large platforms form millions of contracts every year with American children. And even though a minor can void most contracts into which he or she enters, most jurisdictions have laws that hold minors accountable for the benefits received under the contract. Thus, children can make enforceable contracts for which parents could end up bearing responsibility. Targeting children to create potentially harmful contracts or making parents responsible for such contractual relationships is an unfair trade practice. The FTC, therefore, has the authority, interest, and duty to protect children online from such contractual relationships.

- **The FTC should examine platforms' advertising and contract-making with children as a deceptive or unfair trade practice, perhaps requiring written parental consent.**

Currently, the Child Online Privacy Protection Act (COPPA)[20] regulates the information internet firms can obtain from children. COPPA fails because it (1) only protects children under the age of 13, leaving older teenagers completely unprotected and (2) only prohibits platforms from collecting information from a child using "actual knowledge" rather than abiding by the "constructive knowledge" standard, which prohibits collecting information from a user reasonably assumed to be underage. The FTC has rulemaking authority under this statute but has done little with this authority, nor can it—given the statutory constraints. However,

- **The FTC can and should institute unfair trade practices proceedings against entities that enter into contracts with children without parental consent.** Personal parental responsibility is, of course, key, but the law must respect, not undermine, lawful parental authority.

Other conservatives are more skeptical concerning the effect of online experience on the young, comparing the concern about social media to concern about video games, television, and bicycle safety. They point out, as does Cato fellow Jeffrey A. Singer, that the psychiatric profession has yet to designate "internet addiction" or "social media addiction" as a mental disorder in the authoritative Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR).[21] These conservatives also maintain that calling for regulation undermines conservatives' calls for parental empowerment on education or vaccines as well as personal parenting responsibility.

In addition, some of the methods used to regulate children's internet access pose the risk of unintended harms. For instance, age verification regulations would inevitably increase the amount of data collection involved, increasing privacy concerns. Users would have to submit to platforms proof of their age, which raises the risks of data breach or illegitimate data usage by the platforms or bad actors. Limited-government conservatives would prefer the FTC play an educational role instead. That might include best practices or educational programs to empower parents online.

Antitrust Enforcement. As is evidenced by a relentless focus on bringing Big Tech lawsuits, state attorneys general (AGs) are far more responsive to their constituents than is the FTC. Such a "boots on the ground" approach would benefit the FTC enormously. Practically, this would mean establishing a distinct role in the FTC Chairman's office focused on state AG cooperation and inviting state AGs to Washington, D.C., to discuss enforcement policy in key sectors under the FTC's jurisdiction: Big Tech, hospital mergers, supermarket mergers, and so forth.

FTC regional offices are substantially more in touch with local issues. Over the past few decades, the reach and influence of regional offices has shrunk dramatically. The FTC should consider returning authority to these offices.

Some conservatives however are less supportive of this idea. Conservative enthusiasm for the idea of adding regional FTC offices to the states is a break from the majority conservative position. Endorsing the federal government as a premier job creator runs counter to decades of conservative opinion that holds that New Deal agencies and subsequent government bodies should never have been created in the first place, and that their red tape and interference is a dominant cause of economic inefficiency. Republicans used to seethe when Democrats tried to move federal offices into the states. In the early 1990s, House Minority Whip Newt Gingrich fumed about Senator Robert Byrd's campaign to transfer certain national intelligence facilities to West Virginia, calling it a "pure abuse of power."

Some contributors to this chapter would remind conservatives that the unseen mechanics of redistribution—by which taxpayer money paid to state employees is taken from taxpayers nationwide—is a drag on the economy of the entire country. Many conservatives fear that it would be impossible to uproot or even prune back

a bureaucracy the seeds of which have been planted in every state. State legislators would struggle to slash funding from agencies that employ and generously pay thousands of their constituents. FTC outposts would tie middle America inextricably to big progressive government, remaking the heartland in Washington's image. It would be anything but decentralization; Americans need policy makers to discipline the arrogance that prevails inside the Beltway, not spread it. It would be "Swamp 2.0": just as deep and many times as wide.

Big Tech and Antitrust. The large internet platforms have transformed the U.S. economy, streamlining consumer purchases, networking billions of people, and altering long-established business practices. Despite their enormous size, they have avoided significant antitrust liability or prosecution. The reasons for this are not entirely clear.

It may be because these platforms have been incredibly innovative and have generated tremendous efficiencies for our society, with little to no evidence of traditional consumer harm in the form of higher prices, reduced output, or a lack of innovation. Also, Americans report a high level of satisfaction in and trust regarding these companies.

The less friendly regulatory environment in the European Union would make a good case study in expansive antitrust law. The continent boasts not one of the top 10 global tech companies, while the U.S. can claim eight.[22] Some claim that the recent drop in value of former leader and current antitrust target Meta, along with the rise of new competitors such as Zoom and Chinese-dominated TikTok, indicates that competitive forces are healthy and at work benefiting consumers in the tech space.

On the other hand, the platforms challenge traditional economic thinking because arguably the firm structure they employ is radically different, and they create different competition dynamics. First, there is some evidence that the major internet platforms have market power, resulting in increased prices for advertisers, costs that very well could be passed onto consumers. For instance, numerous government studies have found evidence of market power.[23] And while some data show declining advertising costs, they also show increasing prices in this decade.[24]

Second, while consumers may report that they like social media, hedonics tells a different story, suggesting that social media and other online activities diminish human happiness. This evidence, while mixed at first,[25] appears to have become quite solid: Social media makes Americans less happy.[26]

Third, internet platforms have not created consumer price increases, but of course they provide free services—and this creates a challenge for antitrust regulation. For decades, antitrust economics has been focused on a paradigm in which firm and consumer behavior are modeled as functions of price and output as the primary variables. It may very well be that these models do not fully capture the effect of technologies that enable increasing returns to scale based on data, such

as digital platforms. This possibility cannot be lightly discounted, considering the tremendous market power of these firms and their market cap, with the top five firms of the U.S. market (Apple, Microsoft, Amazon, Tesla, and Alphabet) responsible for 23.5 percent of the market cap of the S&P 500 index in early December 2021.

The questionable predictive power of traditional economic theory was illustrated when, after a much-heralded investigation, antitrust regulators appointed by former President Barack Obama declined to sue Google in January 2013 for anticompetitive behavior. The FTC spent 19 months investigating Google over allegations that the search giant was violating antitrust laws by favoring its own products over those of rival content providers, including eBay, Yelp, TripAdvisor, Facebook, and Amazon. The probe focused on Google's control over online search and search advertising, as well as the company's growing dominance in mobile phone software.

According to documents uncovered in press reports,[27] the FTC's economists successfully argued against initiating antitrust action against the company. This decision was based in large part on a series of predictions that the agency's staff economic experts made. These predictions turned out to be wrong in several respects. For instance, according to press accounts, these economic experts saw only "limited potential for growth" in ads that track users across the web—now the backbone of Google parent company Alphabet's $182.5 billion in annual revenue. Relying on theory, the experts downplayed the importance of mobile search, believing that search would continue to be conducted primarily on desktop computers—and thereby underestimating the effect of Google on Android systems. The experts predicted that Microsoft, Mozilla, or Amazon would offer viable competition to Google in mobile search. This decision, of course, occurred in a political environment of close relationships between the Obama Administration and Silicon Valley.

Just as traditional economic theory seems inadequate to the job of understanding Big Tech and predicting its behavior, empirical evidence is very difficult to come by. This is particularly troublesome. Beyond the fact that most user data are proprietary, online markets change so quickly that econometric conclusions are often difficult to make because even if the data are available, they do not exist for long enough time horizons. Yet, a pattern of highly concentrated firms—with occasional dropout and replacement by another successor firm with vast market power—seems to be emerging.

The policy implications of this quandary are not clear, but for the conservative movement, some believe that some type of policy response is necessary. The dominant internet platforms have disrupted democratic deliberation, as is evidenced by the Hunter Biden laptop story. They have a propensity to collude with government to advance political goals, as documents unearthed by the Missouri and Louisiana AG suits concerning the COVID response demonstrate. And they play a pivotal role in our economy.

As Judge Frank Easterbrook famously suggested, regulators should look at the cost of error in their judgments. This argument has usually been used to buttress a tentative and hands off approach to antitrust because judicial error in antitrust will persist (Type II error) and continue to damage markets, while failure to take antitrust action (Type I error) will correct itself in the long run as competitors challenge monopolies.[28] However, failing to take antitrust enforcement action (Type I error) includes the possibility of real injury to the structure of important American institutions such as democratic accountability and free speech. If so, a more proactive approach may be warranted.

Certain online services, such as social media, have an unquestionable negative utility, particularly on young people, as set forth above. The more "efficient" provision of such services may create more unhappiness. More broadly, the utility benefits of many online platforms and services are obscure and may be significantly overstated, as the most recent evidence suggests.[29] The FTC must become more sophisticated in measuring consumer surplus. In addition, the FTC should be open to behavioral explanations, such as habit and small hedonic differences, as keys to how platforms create and keep market power.[30]

CONCLUSION

Conservative approaches to antitrust and consumer protection continue to trust markets, not government, to give people what they want and provide the prosperity and material resources Americans need for flourishing, productive, and meaningful lives. At the same time, conservatives cannot be blind to certain developments in the American economy that appear to make government–private sector collusion more likely, threaten vital democratic institutions, such as free speech, and threaten the happiness and mental well-being of many Americans, particularly children. Many, but not all, conservatives believe that these developments may warrant the FTC's making a careful recalibration of certain aspects of antitrust and consumer protection law and enforcement.

AUTHOR'S NOTE: The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but Rachel Bovard, John Ehrett, Christopher Iacovella, Jessica Melugin, and Jon Schweppe deserve special mention. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

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ONWARD!

Edwin J. Feulner

The idea of *Mandate for Leadership* was first conceived in the fall of 1979 at a Heritage Foundation board of trustees meeting when former Treasury Secretary Bill Simon and former General Services Administration Administrator Jack Eckerd discussed the predicament they had faced when they first joined a new, more conservative presidential Administration: They received no practical plans on how to move their part of the federal bureaucracy to reflect a more conservative policy direction other than vague exhortations to promote free markets; smaller, more efficient government; and a stronger national defense. In their new positions, they were briefed either by holdover appointees from the former liberal Administration or by career civil servants who, inevitably, had a vested interest in maintaining the status quo.

The discussion became quite animated as these Heritage board members recalled transitioning to government positions from their former lives in the private sector—moving their families, finding new homes, and uprooting their children's education while they assumed new responsibilities in a very different environment.

Frank Shakespeare, who had headed the United States Information Agency during the Cold War, noted that electoral politics is what gets a President and Vice President elected and sent to Washington, but then policy politics is what they had to focus on to do the right thing once they got the big job.

Former Navy Secretary and Ambassador Bill Middendorf added that there must be a better way to prepare for real change in a more conservative direction in the political environment in Washington. If a conservative candidate were to become

the President-elect in just 16 months, what could be done by an outside group to prepare for these new opportunities?

The staff at Heritage took this idea on as a challenge, and it would become the defining policy decision in the early history of this upstart think tank. Task forces of knowledgeable volunteers were formed with specific expertise in the whole range of policy issues—from welfare reform to national defense reform.

The vision for *Mandate for Leadership* was that it would serve as a guidebook of specific policy recommendations for reducing the size and scope of the federal government and for ensuring that it stayed within its constitutional bounds. Positive plans for freeing the private sector from overblown government interference and regulation could, we believed, result in an explosion of entrepreneurial activity that would reassert America's leading role in the world's economy.

Thus, if conservatives finally gained control in Washington, they were prepared to answer the question, "What is the conservative agenda?"

Candidate, then President-elect, then President Ronald Reagan's "feisty new kid on the conservative block—The Heritage Foundation"— had the answer, and it was *Mandate for Leadership*.

First published in January 1981, the original *Mandate* served as a conservative plan of action for the Reagan Administration, providing much of the blueprint for the Reagan Revolution. It contained more than 2,000 detailed, actionable policy recommendations to move the federal government in a conservative direction.

The recommendations ranged from internal bureaucratic reorganizations to plans to implement specific, fundamental changes in every imaginable policy area—from tax and regulatory reform to strengthening national defense to reforming social programs. All were carefully crafted, vetted, and pieced together.

On January 21, 1981, at the first meeting of his Cabinet, President Reagan distributed copies of *Mandate*, and many of the study's authors were recruited into the Administration to implement its recommendations.

In the foreword of that first edition, I wrote, "What is offered by the authors is a series of proposals which, if implemented, will help revitalize our economy, strengthen our national security, and halt the centralization of power in the federal government."

The conservative movement had found in Ronald Reagan a President who shared that vision and who had the will to go against the established political grain in Washington. He also had the ability to speak directly to the American people and convincingly show them how those ideas could work for the benefit of all.

Mandate's proven ideas and President Reagan's skill at communicating their benefits led to his Administration implementing almost half of the recommendations by the end of his first year in office.

Those recommendations led to tax cuts and other economic policies that gave America one of the longest periods of peacetime economic growth in its

history—with an annual growth rate that has not been rivaled since then. The recommendations led to a rebuilding of the United States military, helped to bring an end to the Cold War and to the Soviet Union itself, and reinvigorated the American people with a collective sense of pride and patriotism that many thought had vanished forever.

After that first edition, a new *Mandate* was produced every four years. But the 2016 edition was one of particular note. It earned significant attention from the Trump Administration, as Heritage had accumulated a backlog of conservative ideas that had been blocked by President Barack Obama and his team.

Soon after President Donald Trump was sworn in, his Administration began to implement major parts of the 2016 *Mandate*. After his first year in office, the Administration had implemented 64 percent of its policy recommendations.

As a result of those recommendations, the Trump Administration cut taxes and eliminated unnecessary regulations, creating a growing economy and the lowest unemployment rate in five decades—including among minorities and women. It made America a net energy exporter for the first time in half a century. It also prioritized veterans' care and rebuilt our national defenses.

As I noted above, in his first year in office, President Reagan implemented nearly half of *Mandate*'s recommendations—an extraordinary feat. In 2018, in an interview on Fox News, I mentioned that President Trump had implemented more recommendations in his first year than Ronald Reagan did in his. Of course, at the time, Reagan did not have both a Republican House and Senate as Trump did. Nonetheless, President Trump liked being compared to a former President he deeply admired, and he touted the comparison frequently.

This anecdote illustrates how *Mandate* provides a yardstick for conservative Presidents to measure their performance relative to one another. And, very importantly, it allows the American people to see concrete evidence of the progress an Administration is making toward reversing the growth of government and implementing conservative solutions in its stead. In essence, it allows the American people to hold their politicians accountable to the principles they profess to believe in.

When we were producing that first *Mandate* edition, we had suffered under four years of Jimmy Carter with double-digit inflation, double-digit interest rates, high unemployment, gasoline rationing, weakness overseas, and what Carter himself called a malaise that he had induced in the American people.

In the 1981 *Mandate* foreword, I wrote:

> The full recovery of our nation in both the economic and foreign policy spheres will require the sustained application of sound policies over several years. There are no "quick fix" solutions to problems that have been years in the making. But no time must be lost in taking the first decisive steps on the road to recovery.

Today, President Joe Biden has brought us back to the days of Jimmy Carter—actually, even worse—with full-bore economic, military, cultural, and foreign policy turmoil. The advice that I wrote more than four decades ago just as easily could have been written today. A conservative Administration coming on board in 2025 will need to hit the ground running just to undo the significant damage that will have been done during the Biden years.

Something that is essential to ensuring that a new President in 2025 can successfully implement a conservative agenda is having the right personnel to run the executive branch departments and their agencies.

This is why it is so often said that "people are policy." The Cabinet secretaries, deputy secretaries, undersecretaries, assistant secretaries, deputy assistant secretaries, administrators, agency heads, and on and on that a new President chooses to place throughout the executive branch must be principled individuals already aligned with the President's conservative vision. And they must be willing to execute it on the President's behalf.

These personnel choices will ultimately determine the success or failure of the policy agenda and, hence, of the whole Administration.

Presidential appointees not only are critical to implementing the policy agenda, but also must serve to "watch the watchers" in the departments and agencies they oversee. They must ensure accountability as well as provide a check on the inherent nature of the administrative state to overreach its authority.

For example, they must rein in the Environmental Protection Agency, which declared backyard streams navigable waterways that then fall under its authority. They must rein in the Internal Revenue Service, including its 87,000 new employees hired to pick through every detail of what Americans make and how they spend their money. They must rein in agencies such as the Occupational Safety and Health Administration, which the Biden Administration weaponized to attempt to force COVID-19 vaccine mandates on 84 million Americans through their workplaces.

When these new presidential appointees come into office, it is often the career bureaucrats who end up orienting them to their new positions. Many of these bureaucrats are all too comfortable with the status quo. Appointees have only four years (eight at the most) to effect change and make a difference. They need a road map to do that starting on Day One.

That road map is exactly what *Mandate* provides. It is not a mandate to maintain the status quo but just do it a little more efficiently. Rather, it is a mandate to significantly advance conservative principles in practice and demonstrate to the American people that where liberal policies generally fail, conservative solutions succeed in making life better for all of us.

From the original 1981 Reagan-era *Mandate for Leadership* to this edition for 2025, the purpose remains the same: to present concrete proposals to revitalize

our economy, strengthen our national security, and halt the centralization of power in the federal government.

In Washington, there are no permanent victories. But neither are there permanent defeats. Rather, there are permanent battles throughout the policy arena. The other side is never standing still. While we may achieve tremendous successes under conservative leaders, the Left is always working to chip away at them, which is why we must constantly be prepared for the next fight.

That's why today, Heritage President Kevin Roberts, Project 2025 Director Paul Dans, the whole Heritage team, more than 50 organizations, and more than 360 experts from throughout the conservative movement have come together to continue the *Mandate for Leadership* tradition of creating policy solutions to solve the biggest issues facing America—solutions based on the core principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.

We do this not to expand government, grow its largesse for some special interest, or centralize more control in Washington. Instead, we do this to build an America where freedom, opportunity, prosperity, and civil society flourish for all.

One final note: As most readers know, this section of a book is usually called the "Afterword," but we have decided to title it "Onward!"

In all the decades that I served as The Heritage Foundation's founder and president—and to this day as a member of its Board of Trustees—I have ended my communications with the exhortation "Onward!" This has been my charge to encourage friends, colleagues, and allies that we must always be advancing. There are always new battles *and* new opportunities ahead to challenge us to do even more, and we must be ready for them, willing to engage, and use them to work for the betterment of this nation and her people.

An afterword connotes finality, but "Onward!" signals that our next mission is just beginning.

That is the message I leave you with today. *Onward!*

The comprehensive policy guide for a new conservative president, offering specific reforms and proposals for Cabinet departments and federal agencies, pulled from the expertise of the entire conservative movement.

Praise for *Mandate for Leadership 2025:*

"The next conservative president must dismantle the administrative state and return power back to the states and the American people. This publication is a blueprint to do just that."

–Mike Lee
U.S. Senator, Utah

"Months before he was sworn in, The Heritage Foundation provided incoming President Reagan a copy of the first *Mandate for Leadership*, setting out a bold agency-by-agency agenda. Now 40 years later, conservative leaders have joined together again to prepare this compendium of policy fixes. Welcome to the next conservative revolution."

–Ed Meese
Former U.S. Attorney General

"A sweeping plan to end the weaponization of the government against Americans and the values they care about."

–Mollie Hemingway
Editor-in-Chief, The Federalist

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